

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

ARGUED FIRST TERM 1922

No. 190

A. BOERJOIS & COMPANY, INC., PETITIONER,

vs.

ANNA KATZEL.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

RECEIVED FROM THE PETITIONER'S ATTORNEY, J. H. [illegible]
AND ENTERED FILED NOVEMBER 22, 1922.

(31,530)

(28,530)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 575.

A. BOURJOIS & COMPANY, INC., PETITIONER,

vs.

ANNA KATZEL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

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1 *Equity Subpœna.*

The President of the United States of America to Anna Katzel,
Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by A. Bourjois & Co., Inc., and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you of Two Hundred and fifty dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 4th day of November in the year one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fifth.

ALEX. GILCHRIST, Jr.,
Clerk.

BRIESEN & SCHRENK,
Plaintiff's Sol'rs.

The defendant is required to file her answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken *pro confesso*.

ALEX. GILCHRIST, Jr.,
Clerk.

2 *Bill of Complaint.*

In the United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

The plaintiff, for its bill of complaint against the defendant, alleges and says upon information and belief:

1. The full name, citizenship and residence of the plaintiff are as follows: A. Bourjois & Co., Inc., a corporation duly organized and existing under the Laws of the State of New York and a citizen of said State, said plaintiff residing and having a place of business and office at No. 35 West 34th Street, New York City.

2. The full name of the defendant is Anna Katzel, who is, as the plaintiff is informed and believes, and therefore alleges, a citizen of

the State of New York and a resident of the Borough of Bronx, New York City, having her pharmacy or place of business at No. 706 Fairmont Place, Borough of Bronx, New York City.

3. The jurisdiction of the Court depends upon the Act of February 20, 1905, as amended, known as the Trade Mark Laws of the United States.

3 4. On or about July 5, 1913, A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs, a firm composed of Ernest Wertheimer, Paul Wertheimer and Pierre J. Wertheimer, all of Paris, France, the firm having an office and doing business at Paris, France, and also in the United States of America, by virtue of a large, long established business on the part of themselves and their predecessors commenced and continuously conducted for more than ten years next preceding February 20, 1905, and beginning approximately in 1879, was the sole and exclusive owner for and throughout the United States of America and the various states thereof of certain trade marks, trade names and the good will appurtenant thereto relating to various toilet preparations and particularly toilet powder or face powder, together with numerous certificates of registration of the United States Patent Office for said trade marks, especially the following:

15,983.	Registered	November 6, 1888 (Java),
69,143.	"	May 19, 1908 (A. Bourjois
		& Cie and monogram),
89,313.	"	December 3, 1912 (Java top
		and side label).

5. That on or about said July 5, 1913, the said firm of A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs, did grant, sell and convey to the plaintiff, A. Bourjois & Co., Inc. and said plaintiff did purchase from said A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs for and in consideration on the part of the plaintiff of an obligation to pay, among other things, Four hundred thousand dollars (\$400,000.00) in money, the entire business heretofore and then being carried on by said A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs, in the United States, to wit, the sale of the various toilet preparations manufactured and sold by said A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs, in the United States of America, together with the good will of said business in the United States, and also any and all trade marks, trade names and trade mark rights relating thereto in the United States and also the sole and exclusive right to manufacture and sell in the United States any and all toilet preparations then made by the said A. Bourjois & Cie, E. Wertheimer & Cie, Successeurs.

6. That the plaintiff being thus, by virtue of the said purchase, the sole and exclusive owner for the United States of America, of the trade mark "Java" for toilet preparations, and particularly face powder, and the good will appurtenant thereto, together with the good will and trade mark rights appurtenant to the boxing, packing

and labeling of such powder and the trade marks and good will inherent in all such label markings carried by said boxes, did continue the business theretofore conducted in the United States by its aforesaid assignor continuously since the date of said purchase and on a very large scale, expending many hundreds of thousands of dollars, in advertising, in supervising the product, in maintaining its grade, standard and excellence, in selecting and controlling the color tints thereof and in many other ways appropriate to the proper manufacture, packing and distribution of merchandise of this nature, so that ever since 1913 the public throughout the

5 United States have purchased from this plaintiff in large and increasing quantities exceeding hundreds of thousands of boxes each year, "Java" face powder, and the public know and recognize and call for such powder under the said trade mark "Java" and recognize said trade mark as the identifying mark of this plaintiff's powder, the same being true with respect to the other labels and insignia of plaintiff's package, a specimen of which is herewith produced and made a part hereof and marked "Exhibit A"; by virtue of which facts and the excellence of plaintiff's powder, it has enjoyed and now does enjoy the high regard of the public to its great benefit and advantage.

7. That the trade marks aforesaid, registered by the plaintiff's assignor and their predecessors, were duly transferred to the plaintiff by proper assignments recorded by the Patent Office in Washington and at all times since July, 1913, were and are the sole and exclusive property of the plaintiff.

8. That since the plaintiff's acquisition of the said exclusive property rights for the United States with respect to such face powder labels, trade marks, good will, etc., the plaintiff has itself registered its said trade marks, of which it is the sole and exclusive owner for the United States, in the Patent Office of the United States, receiving therefor certificates as follows:

99,940. September 29, 1914 (Java),
110,632. June 6, 1916 (Side Label),
111,177. July 4, 1916 (Bottom Label),

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120,330. February 5, 1918 (Bourjois),
122,674. September 10, 1918 (Bottom Label, more recent form),
125,930. July 15, 1919 (Top Label and Side Label),

all as will more fully appear from copies of the said registrations produced herewith and made a part hereof as "Exhibits B to G" inclusive.

9. That the defendant in order to secure unto herself a part of the benefits and good will which are rightfully the exclusive property of this plaintiff throughout the entire United States, did lately procure or cause to be procured in markets foreign to the United States boxes of face powder shaped, marked and labeled in close

simulation to the boxes of this plaintiff and did in commerce with the United States and foreign countries as aforesaid, cause said goods to be brought into the United States and thereupon offered them for sale and is selling the same at her place of business and has been delivering or offering to deliver the same to purchasers in New York and adjacent states, all in infringement of the said registered trade marks. A specimen of the defendant's box complained of is produced herewith and made a part hereof as "Exhibit H."

10. The plaintiff further states that the defendant's said wrongful acts have caused and will cause great, irreparable injury and damage, the amount of which this plaintiff cannot precisely state but which is estimated at in excess of Fifty thousand dollars (\$50,000.00).

11. The value of the trade mark "Java" and its adjunct trade marks for the United States exceeds Five hundred thousand dollars (\$500,000.00) in value and that the matter in dispute, exclusive of interests and costs, exceeds the sum or value of One hundred thousand dollars (\$100,000.00).

Wherefore the plaintiff prays:

(a) That a writ of subpoena issue out of this Court directing her to appear and answer this complaint; (b) that an injunction, both provisional and perpetual, issue out of this Court directed to said defendant; her servants, agents, attorneys and workmen, enjoining and restraining them and each of them from engaging, directly or indirectly in any interstate or foreign commerce with respect to any face or toilet powder in connection with which there is printed or used a reproduction, copy or colorable imitation of the trade mark "Java" (in infringement of trade mark registration, No. 99,940, dated September 29, 1914), or of the trade mark "Bourjois" (in infringement of trade mark registration No. 110,632 of June 6, 1916), or of any of the trade marks covered by certificates No. 111,177 of July 4, 1916, No. 12,330 of February 5, 1918, No. 122,674 of September 10, 1918, and No. 125,930 of July 15, 1919, and from selling, offering for sale, importing, delivering or otherwise disposing of any face or toilet powder marked or identified in any way as "Java", "Bourjois" or under any of plaintiff's registered trade marks; (c) that defendant be required to deliver to the

8 Marshal of this Court for destruction all boxes, labels, packages or containers containing any such infringing matter; (d) that the defendant be directed to account for and pay over to this plaintiff profits made by her by reason of the said infringements, together with the damages suffered by the plaintiff thereby and the costs and disbursements of the suit.

BRIESEN & SCHRENK,

Solicitors for Plaintiff.

No. 25 Broad Street, New York, N. Y.

HANS V. BRIESEN,

Of Counsel.

Exhibit "B"

UNITED STATES PATENT OFFICE.

A. BOURJOIS & CO. INC., OF NEW YORK, N. Y.

TRADE-MARK FOR TOILET POWDERS.

99,940.

Registered Sept. 29, 1914.

Application filed June 12, 1914. Serial No. 79,026.

STATEMENT.

To all whom it may concern:

Be it known that A. Bourjois & Co. Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, located in the borough of Manhattan, city and State of New York, and doing business at the northwest corner of Irving Place and Sixteenth street, in the borough of Manhattan, city and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for Toilet Powders, in Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade mark has been continuously and exclusively used in the business of said corporation and in the said business of its predecessors, E. Wertheimer & Cie., A Bourjois

& Cie. and Alexandre N. Bourjois since January 1879.

The trade mark is used by being printed or otherwise produced on labels which are attached to boxes and packages containing the goods.

The said corporation A. Bourjois & Co. Inc. is the present owner of United States trade mark registrations: No. 15,983 of November 6, 1888 obtained by said Alexandre N. Bourjois and No. 89,313 of December 3, 1912 obtained by E. Wertheimer & Cie. and all rights thereunder.

A. BOURJOIS & CO. INC.,

By OTTO v. SCHRENK,

Its Secretary.

JAVA

DECLARATION.

State of New York, county of New York, ss:
OTTO v. SCHRENK being duly sworn, deposes and says, that he is the secretary of A. Bourjois & Co. Inc., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes the said A. Bourjois & Co. Inc. to be the owner of the trade mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade mark is used by said A. Bourjois & Co. Inc. in commerce among the several States of the

Union, and particularly between the States of New York and New Jersey, and that the description; drawing and specimens presented for record truly represents the trade mark sought to be registered, and that the said mark has been in actual and exclusive use as a trade mark of the applicant and its predecessors from whom it derived title for ten years next preceding February 20th, 1905.

OTTO v. SCHRENK.

Sworn to and subscribed before me this 30th day of May, 1914.

[L. s.]

FRED A. KLEIN,
Notary Public.

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

EXHIBIT C, ATTACHED TO COMPLAINT.

Exhibit "C"

UNITED STATES PATENT OFFICE.

A. BOURJOIS & CO., INC., OF NEW YORK, N. Y.

TRADE-MARK FOR FACE-POWDER.

110,632.

Registered June 6, 1916.

Application filed January 22, 1916. Serial No. 92,322.

STATEMENT.

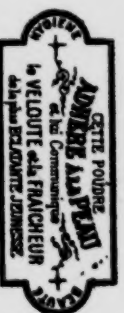
To all whom it may concern:

Be it known that A. BOURJOIS & Co., Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, located in the borough of Manhattan, city and State of New York, and doing business at the northwest corner of Irving Place and Sixteenth street, in the borough of Manhattan, city and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for face-powder, in Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade mark has been continuously used in the business of said corporation and in the business of its predecessors since January, 1879.

The trade mark is applied or affixed to the goods by being printed or otherwise produced upon labels which are attached to boxes and packages containing the goods.

A. BOURJOIS & CO., INC.,
By OTTO V. SCHRENK,
Secretary.



DECLARATION.

State of New York, county of New York, ss.:
OTTO V. SCHRENK, being duly sworn, deposes and says, that he is the secretary of A. BOURJOIS & Co., Inc., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes said corporation to be the owner of the trade mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has a right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trademark is used by said corporation in commerce among the several States of the Union, and particularly be-

tween the States of New York and New Jersey; that the description and drawing presented truly represent the mark sought to be registered; that the specimens show the mark as actually used upon the goods; and that the mark has been in actual use as a trade mark of the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

OTTO V. SCHRENK.

Subscribed and sworn to before me, this 17th day of January, 1916.
[L. s.] JOSEPH T. MCNAIR,
Notary Public.

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents and Trademarks," Washington, D. C.

Exhibit "E"

UNITED STATES PATENT OFFICE.

A. BOURJOIS & CO., INC., OF NEW YORK, N. Y.

TRADE-MARK FOR CERTAIN NAMED TOILET PREPARATIONS.

120,330.

Application filed September 19, 1917. Serial No. 106,308.

Registered Feb. 5, 1911.

STATEMENT.

To all whom it may concern:

Be it known that A. BOURJOIS & Co., INC., a corporation duly organized under the laws of the State of New York, located and doing business at 35 West 34th street, in the borough of Manhattan, city and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, consisting of the word "Bourjois," for toilet preparations, as follows, face-powder, toilet powder, sachet-powder, rice powder, talcum powder, toilet waters; perfumes, used either pure or as an ingredient in toilet preparations in admixtures with suitable substances in the form of pastes, salves, soaps, powders, pencils, and liquids; rouges, (liquid, powder, and compact,) pomades, pomade sticks, hair-wax, eyebrow-pencils, nail-enamels,

nail-polishes, nail-acids, nail-powders, lip-sticks, lip-pomades, hair-dressing, hair-oil, hair-pomades, hair dyes and bleaches, cologne, perfumed toilet extracts, brillantine, face-cream, toilet cream, mouth-washes, Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade mark has been continuously used in the business of said corporation, and in the business of its predecessors from whom title was derived, since 1860.

The trademark is applied or affixed to the goods by being printed or otherwise produced upon the labels attached to the packages containing the goods.

A. BOURJOIS & CO., INC.,

By OTTO V. SCHRENK,
Secretary.

Bourjois

DECLARATION.

State of New York, county of New York,

ss.:

OTTO V. SCHRENK, being duly sworn, deposes and says, that he is the secretary of A. BOURJOIS & Co., INC., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes said corporation to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by said corporation in commerce among the several States of the Union, and particularly between the States of New York and Illinois and in commerce between the United

States and foreign nations or Indian tribes, and particularly with France; that the description, drawing and specimens (fac-similes) presented for record truly represent that the specimens show the trade-mark as actually used upon the goods, and that the mark has been in actual use as a trade mark of the applicant and applicant's predecessors in business, from whom title was derived, for ten (10) years next preceding February 20, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

OTTO V. SCHRENK.

Sworn to and subscribed before me this 18th day of Sept., 1917.

[L. S.] JOSEPH T. MCNAIER,
Notary Public.

Exhibit "F"

UNITED STATES PATENT OFFICE.

A. BOURJOIS & CO., INC., OF NEW YORK, N. Y.

TRADE-MARK FOR FACE-POWDER.

122,674.

Registered Sept. 10, 1918.

Application filed December 18, 1917. Serial No. 108,031.

STATEMENT.

To all whom it may concern:

Be it known that A. BOURJOIS & Co., INC., a corporation duly organized and existing under the laws of the State of New York, located and doing business at No. 35 West 34th street, in the borough of Manhattan, city and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for face-powder, in Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade mark has been continuously used in applicant's business and in the business of applicant's predecessor since January 1879.

Applicant is the owner of trade mark registration 111,177 granted to it on July 4, 1916.

The trade mark is applied or affixed to the goods by being printed or otherwise produced upon labels which are attached to the bottom of the boxes in which the goods are packed and sold, or it is otherwise applied or affixed to the boxes or packages containing the goods.

A. BOURJOIS & CO., INC.,
By OTTO V. SCHRENK,
Secretary.



DECLARATION.

State of New York county of New York ss.:
OTTO V. SCHRENK, being duly sworn, deposes and says that he is the secretary of A. BOURJOIS & Co., Inc., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes said corporation to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by said corporation in commerce among the several States of the Union, and particularly between the States of New York and Illinois;

that the description, drawing and specimens presented for record truly represent the trade-mark sought to be registered; and that the specimens show the trade-mark as actually used upon the goods; and that the mark has been in actual use as a trade mark of the applicant and applicant's predecessors from whom title was derived for ten years next preceding February 20, 1906, and that, to the best of his knowledge and belief, such use has been exclusive.

OTTO V. SCHRENK.

Sworn to and subscribed before me this 17th day of December, 1917.

[L. s.]

FRED A. KLEIN,
Notary Public.

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

EXHIBIT G, ATTACHED TO COMPLAINT.

Exhibit "G"

UNITED STATES PATENT OFFICE.

A. BOURJOIS & CO., INC., OF NEW YORK, N. Y.

TRADE-MARK FOR FACE-POWDER.

125,930.

Registered July 15, 1919.

Application filed October 9, 1918. Serial No. 113,588.

STATEMENT.

To all whom it may concern:

Be it known that A. Bourjois & Co., Inc., a corporation duly organized and existing under the laws of the State of New York, located and doing business at No. 35 West 34th street, in the borough of Manhattan, city and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for face-powder, in Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade mark has been continuously used in applicant's business and in the business of applicant's predecessors, since January 3, 1879.

Applicant is the owner of trade mark registration No. 89,813 granted to its immediate predecessor in business, the firm of E. Wertheimer & Cie. on December 3, 1912, and of the good will of the business in which

said trade mark is used. The assignment by the registrant to applicant is recorded in the United States Patent Office under date of November 6, 1915 in Liber I 98, page 424.

The applicant is also the owner of trade mark registration No. 15,988 granted to one of its predecessors in business, Alexandre Napoleon Bourjois on November 6, 1888, and of the good will of the business in which said trade mark is used.

The trade mark is applied or affixed to the goods by being printed or otherwise produced upon labels which are attached to the boxes in which the goods are packed and sold, or it is otherwise applied or affixed to the boxes or packages containing the goods

A. BOURJOIS & CO., INC.
By OTTO V. SCHRENK,
Secretary.



DECLARATION.

State of New York county of New York ss.:

Otto v. Schrenk being duly sworn, deposes and says, that he is the secretary of A. Bourjois & Co., Inc., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he believes said corporation to be the owner of the trade-mark sought to be registered; that no other person, firm, cor-

poration or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by said corporation in commerce among the several States of the Union, and particularly between the States of New York and New

STATE OF NEW YORK,
County of New York, ss:

B. M. Douglas, being duly sworn, deposes and says:

I am general manager of the plaintiff A. Bourjois & Co., Inc., and as such am familiar with the facts of this case. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge except as to the matters therein alleged on information and belief and as to such matters I believe it to be true.

B. M. DOUGLAS.

Sworn to before me this 4th day of November, 1920.

[SEAL.]

Alice Weaver,
Notary Public, Queens County.

Certificate filed in New York County.

(Here follow Exhibits "B," "C," "D," "E," "F," and "G," marked pages 9, 10, 11, 12, 13, and 14.)

EXHIBIT G, ATTACHED TO COMPLAINT.

15

Order to Show Cause

In the United States District Court, Southern District of New York

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

Upon reading the bill of complaint filed in this cause and inspecting the exhibits referred to therein, it is

Ordered, that the Marshal of this Court take an inventory of face powder boxes in the possession of the defendant like or similar to "Exhibit II" referred to in the complaint and file the same with the records of this cause; and it is further

Ordered, that the defendant be, and the same hereby is, ordered to exhibit to the said Marshal each and every face powder box like or similar to the said exhibit in her possession, or under her control and to afford the Marshal all facilities for taking a proper and complete inventory of all of such boxes wherever the same may be

whether in defendant's immediate possession or in the possession of any other person or concern holding the same for or on behalf of the said defendant; and it is further

Ordered, that the defendant show cause on November 12th, 1920, why a preliminary injunction should not issue as prayed for pending the determination of this suit, and that the defendant's affidavits, if any, be served on plaintiff's solicitors on or before November 10th, 1920, and that the plaintiff have to November 12th, 1920, to serve answering affidavits.

This order to show cause is hereby made returnable at the Call of the Regular Motion Calendar to be heard at Room 235 in the Old Post Office Building in the Borough of Manhattan on November 12, 1920, at 10 A. M. or as soon thereafter as counsel can be heard. Copies of the bill of complaint, this order and the plaintiff's affidavit shall be served on defendant or on the person in charge at her place of business on or before November 5, 1920. The exhibits to be retained in custody of plaintiff's counsel, subject to inspection of defendant or her attorney at all reasonable business hours.

November 4th, 1920.

JULIUS M. MAYER,
U. S. District Judge.

17

Affidavit of Harry B. Grubb.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Harry B. Grubb, being duly sworn, says:

I have been associated with A. Bourjois & Co., Inc., the plaintiff company, since its incorporation in 1913 as assistant to the manager, and am thoroughly familiar with the entire facts relative to the commercial distribution of our "Java" face powder. From the moment of the organization of the company, that company was extremely energetic in the matter of placing upon the market face powder under the "Java" trade mark. We have sold this powder, so marked, in practically every state of the union and in enormous quantities. The "Java" face powder is among the most popular face powders on the market and the business runs to more than a million of boxes a year. Naturally we have done a great deal of advertising, our expenses in that respect, relating directly to "Java"

face powder, having been far in excess of One hundred thousand dollars (\$100,000.00). Our product is in such great popular demand that it has frequently been made the object of imitation and I identify herewith as Exhibits I to L, some of the specimens of the imitations which we have been compelled to proceed against and which in the course of the last seven years have been suppressed. I have inspected the box "Exhibit A" attached to the complaint and state that that is the regular standard box of genuine "Java" face powder as it is made and sold by our company, and as it has been made and sold by our company for some time past. Prior to the time that the labels on this box had their precise present phraseology, our boxes were marked with labels wholly similar and differing only in phraseology which since then has undergone revision. Defendant's box "Exhibit H" to the complaint is not one of our boxes.

HARRY B. GRUBB.

Sworn to before me this 3rd day of November, 1920.

[SEAL.]

FRED A. KLEIN,

Notary Public, Richmond County.

Certificate filed in New York County.

Affidavit of John W. Kane.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,
County of New York, ss:

John W. Kane, being duly sworn, says:

That his occupation is salesman; that at the request of A. Bourjois & Co., Inc., he recently visited the place of business of Anna Katzel at No. 706 Fairmont Place, Bronx and there purchased one dozen boxes of "Java" face powder and that "Exhibit H", referred to in the complaint, is one of the boxes so purchased.

JOHN W. KANE.

Sworn to before me this 3rd day of November, 1920.

[SEAL.]

FRED A. KLEIN,
Notary Public, Richmond County.

Certificate filed in New York County.

Answer.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

The defendant, for her answer to the Bill of Complaint in the above entitled action.

First. Denies knowledge or information sufficient to form a belief with respect to the truth of each and every allegation contained in the paragraph of article numbered "1" of said complaint.

Second. Admits each and every allegation contained in the paragraph or article numbered "2" of said complaint.

Third. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegation contained in the paragraph or article numbered "3" of said complaint.

Fourth. Denies knowledge or information sufficient to form a belief with respect to the truth of each and every allegation contained in the paragraph or article numbered "4" of said complaint.

21 except that, upon information and belief, she admits that for many years prior to July 5th, 1913, A. Bourjois & Cie d

Paris, France, used certain trade marks and trade names relating to a toilet or face powder called "Java" and contained in a "Java" top and side label and a label A. Bourjois & Cie and monogram.

Fifth. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph or article numbered "5" of said complaint.

Sixth. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph or article numbered "6" of said complaint.

Seventh. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph or article numbered "7" of said complaint.

Eighth. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph or article numbered "8" of said complaint.

Ninth. Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in the paragraph or article numbered "9" of said complaint as states that a specimen of defendant's box complained of is produced and made a part of said complaint and marked "Exhibit H", and denies each and every other allegation contained in said paragraph or article numbered "9" of said complaint.

22 Tenth. Upon information and belief denies each and every allegation contained in the paragraph or article numbered "10."

Eleventh. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph or article numbered "11" of said complaint.

For a separate defence to the said Bill of Complaint the defendant

Twelfth. Repeats each and every the defences contained in the foregoing paragraphs or articles of this Answer numbered "First" through "Eleventh" inclusive, as if the same were herein fully and at length set forth.

Thirteenth. Upon information and belief, alleges that prior to July 5th, 1913, A. Bourjois & Cie or its or their successors were, and they still are, engaged in Paris, France, in the manufacture and sale of a toilet or face powder known as "Java" or "Poudre de Riz de Java", boxed, packed and labelled in the manner shown in a specimen box herewith produced and made a part of this Answer and marked "Defendant's Exhibit 1."

Fourteenth. Upon information and belief alleges that prior to July 5th, 1913, said toilet or face powder was imported into, and sold extensively in and throughout the United States, in boxes packed and labelled in the manner shown in the aforesaid specimen box marked "Defendant's Exhibit 1."

23 Fifteenth. Upon information and belief alleges that at various times between January and July, 1920, through her duly authorized agent, defendant purchased in the open market in Paris, France, boxes of said genuine toilet or face powder manufactured by A. Bourjois & Cie, of Paris, France, known as "Java" or "Poudre de Riz de Java", which boxes were shaped, marked and labelled in the manner shown in the aforesaid box marked "Defendant's Exhibit 1"; that said purchases were made without condition or restriction as to the ultimate destination or disposition of said goods; that said goods were imported into the United States consigned to the defendant, and that defendant proposes to offer the same for sale to the public in the United States as the genuine toilet or face powder, as manufactured, boxed, packed and labelled by said A. Bourjois & Cie of Paris, France, and known as "Java" or "Poudre de Riz de Java".

Wherefore, the defendant prays judgment that the Bill of Complaint herein may be dismissed with costs.

JOHN B. DOYLE,
Solicitor for Defendant.

No. 34 Pine Street, New York, N. Y.

24 STATE OF NEW YORK,
County of New York, ss:

Anna Katzel, being duly sworn deposes and says:

I am the defendant herein. I have read the foregoing answer and know the contents thereof, and the same is true to my own knowledge except as to the matters therein alleged on information and belief, and as to such matters I believe it to be true.

ANNA KATZEL.

Subscribed and sworn to before me this 10th day of November 1920.

[SEAL.]

FRANCIS X. NICASTRO,
Notary Public.

25 *Affidavit of Anna Katzel.*

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,
against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Anna Katzel, being duly sworn says:

I am the defendant in the above-entitled matter, and reside at No. 706 Fairmont Place, Borough of Bronx, New York City. I am a

registered pharmacist, and for the past ten years have been and am now the sole owner and proprietor of a pharmacy located at the above address.

I have read the plaintiff's papers in the above entitled matter, including the bill of complaint, affidavit of Harry B. Grubb sworn to November 3rd, 1920, and affidavit of John W. Kane, sworn to November 3, 1920. I beg to make a part of my papers in opposition to this motion, my answer duly verified November 10, 1920.

On or about November 4th, 1920, when I was served with plaintiff's papers and the accompanying order of November 4, 1920, at my place of business, as aforesaid, a man representing himself to be a United States Deputy Marshal accompanied by two other men whose identity was not disclosed to me made a search of said premises and took an inventory of certain boxes of "Java" face powder thereon. The boxes of "Java" face powder on said premises were of two kinds, namely, (a) boxes identical in size, shape and color, and as to the labels and stamps thereon with "Defendant's Exhibit 1", referred to in and made a part of my answer herein, except that the term "Blanche" or "Naturelle" or "Rose" was printed on some of the bottom labels and not the term "Rachel" as appearing on defendant's "Exhibit I"; and (b) boxes identical in size, shape and color and as to the labels and stamps thereon with a specimen box, herewith produced and made a part of this affidavit, and marked defendant's "Exhibit II", except that the term "Rachel" or "Blanche" or "Rose" was printed on some of the bottom labels and not the term "Naturelle" as appearing on "Defendant's Exhibit II". Said terms "Blanche", "Naturelle", "Rose", and "Rachel" signify the tint or color of the powder contained in said boxes.

I have not purchased or procured by importation or otherwise, nor have I sold or offered for sale at any time "Java" face powder, except in boxes identical with either "Defendant's Exhibit I" or "Defendant's Exhibit II", as aforesaid.

All "Java" face powder in boxes identical with "Defendant's Exhibit I", as aforesaid, has been offered for sale and sold by me as genuine "Java" face powder manufactured, boxed, packed and labeled by A. Bourjois & Cie of Paris, France; and for reasons hereinafter stated I believe the same to be the genuine article and not an imitation, copy or counterfeit.

Upon information and belief, the sources of my information and the grounds of my belief being statements made to me by my husband, Leon J. Katzel, whose affidavit sworn to November 9, 1920, is submitted herewith, all boxes of "Java" face powder identical with "Defendant's Exhibit I", as aforesaid, now or heretofore owned by me, were bought by my husband, as my purchasing agent, in the open market in Paris, France, as genuine "Java" face powder manufactured, boxed, packed and labeled by A. Bourjois & Cie of Paris, France; that on two different trips to France, and at five different times, namely, in January, April, May, June and July, 1920, my husband purchased said face powder from two

reputable concerns in Paris, France, dealing in perfumery and toilet preparations; that said concerns held forth, represented and sold the same as genuine "Java" face powder, manufacturer, boxed, packed and labeled by A. Bourjois & Cie of Paris, France; that my husband purchased said face powder together with other merchandise from each of said concerns, and shipped the same to me in the United States and the same was imported by me at various times into the United States.

All "Java" face powder in boxes identical with "Defendant's Exhibit II", as aforesaid, now or heretofore owned by me, were bought by me at various times since July 5, 1913, from jobbers or dealers in the United States. I am informed and believe that said face powder was made in France, and packed in the United States, the sources of my information and the grounds of my belief being the printed statement appearing on the bottom label of "Defendant's Exhibit II" and all boxes of "Java" face powder similarly put up, viz.: "Made in France—packed in the U. S. A.". Said "Java" face powder is cheap in price, and common in quality, and has been bought by me for Four and 50/100 dollars (\$4.50) per dozen in the United States, and sold at retail in the United States at from thirty-nine cents (39¢) to fifty cents (50¢) per box.

The sources of my information and the grounds of my belief regarding the sale of "Java" face powder in the United States before and since 1913, as alleged in my answer herein, are observations made by me in handling said goods as a pharmacist during the past ten years and statements made to me by my husband in the course of his business formerly as a pharmacist and latterly as an importer.

I am informed by my husband and believe that the plaintiff recently attempted to induce the United States Customs Authorities at New York to refuse entry into this country or delivery to me by the Customs Authorities of the said "Java" face powder purchased through my husband in Paris, France, claiming that said importations would constitute an infringement of its trade mark in the United States; but that said Authorities, being satisfied that said powder was the genuine "Java" face powder, manufactured, boxed, packed and labeled by A. Bourjois & Cie of Paris, France, refused the demands of the plaintiff and informed it that the importation of a genuine article of foreign manufacture, though trade marked in the United States, did not constitute an infringement of trade marks; that notwithstanding said ruling and advice of the Customs Authorities, the plaintiff thereafter instituted this suit and procured the order of November 4, 1920, under color of which it caused my place of business to be searched, and has put me to much trouble, annoyance and expense in defending this action; and I therefore believe that this suit is not brought against me in good faith, but solely to harass and oppress me in my business, and with full knowledge that I have infringed no right of the plaintiff in the premises.

As pleaded in my answer, I have no knowledge or information whatsoever regarding any transactions between A. Bourpois & Cie or others and the plaintiff; nor am I interested therein. All purchases and sales made by me of "Java" face powder, manufactured, boxed, packed and labeled as shown by "Defendant's Exhibit I", were made by me in good faith, first, because my customers prefer said powder in the genuine French package, and second, because said powder so put up costs less than that packed in the United States.

ANNA KATZEL.

Subscribed and sworn to before me this 10th day of November, 1920.

[SEAL.]

FRANCIS X. NICASTRO,
Notary Public.

30 *Bills Attached to Affidavit of Anna Katzel.*

Aux Parfumeries Reunies,
10 Boulevard Bonne-Nouvelle, Paris.

E. Mazurier.

Toutes les Marques de Parfumeries Francaises & Etrangeres,
Depot des Parfums Extra-Fins de P. Brecher.

Paris, le 6 Janvier, 1920.

M. Leon Katzel, Doit les Marchandises ci-apres Payables a Paris.

Quantite.

12 douzaines, savons R. G.	29.40	352.80
3 " poudre Java	19.80	59.40
		<hr/>
		412.20
20%		82.45
		<hr/>
		329.75
4 Casses—emballage net		48.50
		<hr/>
		378.25

Pour acquit 5 Janvier, 1920.

E. MAZURIER.

31 (Billhead of E. Mazurier, Perfumer.)

Paris, le 5 Janvier, 1920

Monsieur Leon Katzel, Doit les Marchandises ci-apres Payables
Paris.

Quantite.

250	Boites poudre Coty	5.50	1,375.00
24	dz. " " Java	19.80	475.20
30	" " " Anthea	39.00	1,170.00
72	" Crayons Doim	6.00	432.00
18	" Pommades Roger Gallet	10.80	194.40
			<hr/>
20%			3,646.60
			<hr/>
36 dz. Poudres Piver			54.00
			<hr/>
			2,917.80
			<hr/>
39 " Poudres Piver			54.00
			<hr/>
11 " " Java			19.80
			<hr/>
20%			43.55
			<hr/>
			174.35
			<hr/>
Recu			7,141.35
			<hr/>
			500.00
			<hr/>
			6,641.35

Pour acquit 5 Janvier, 1920.

E. MAZURIER.

(Timbre de Quittance.)

32

(Billhead of E. Mazurier, Perfumer.)

Paris, le 30/4, 1920.

Monsieur Katzel, New York, Doit les Marchandises ci-apres Payables
a Paris.

Quantite.

Resport		6,418.20
3 Cœur de Jeanette.....	19.00	57.00
3 Chpyre Ideal	13.00	39.00
3 extraits Houbryant	15.00	45.00
3 " "	8.00	24.00
2 brillante Pinaud	2.20	26.40
2 Lotion "	6.00	72.00
27 dz. pommades levres.....	12.00	324.00
3 extraits Violette Parme.....	11.75	35.25
1 Coffret Ideal		77.00
1 dz. brosses a dent.....		10.00
10 " poudre Java	25.00	250.00
10 " brosses a dent.....	30.00	1,200.00
6 " " " "	25.00	150.00
		<hr/>
		8,727.85
20%		1,745.45
		<hr/>
Net		7,082.40

33

Specialites en Parfumeries.

C. Rignier,

9 Faubg. Poissonniere.

Paris, le 31 Mai, 1920.

Monsieur Katzel.

12 dz.	Extrait No. 1089 Viol. P.....	68.90	826.8
48 "	Poudre Anthea 1316.....	44.00	2,112.0
2 "	Extr. Fl. d'Amour 3786.....	307.00	614.0
2 "	" " Souv. de la Cour.....	355.90	711.8
100 "	Pommade rosat	8.50	850.0
19 "	Savon oeillet 795.....	28.50	541.5
2 "	Poudre serie bleue.....	18.00	36.0
1 "	" " Ideal oeillet.....	28.50	28.5
2 "	Savon Piver	43.20	86.4
5 "	Poudre "	54.00	270.0
4 "	¼ Extrait Piver	126.25	536.8
1 "	Lotion "	84.85	84.8
½ "	Extrait Corylopsis	81.85	40.9
200 "	Poudre Java	27.00	5,400.0
2 "	Eau de quinine Pinaud.....	28.85	57.7
Timbre	0.40	9.0

12,206.7

Pour acquit Paris, le 1er Juin
C. REGNIER.

(Timbre de Quittance.)

34

Specialites en Parfumeries.

C. Regnier,

9 Faubg. Poissonniere.

Paris, le 16 Juin, 1920.

Monsieur Katzel, Rue Rouget de Lisle, Paris.

Emballage—Cerclage des 6 Caisses.....		20.00	
Assurance— “ “ 5 “		37.00	
Port— “ “ 5 “		25.75	
Emballage de		175.00	
16 dz. Poudre Java.....	24.00	384.00	
4 “ “	27.00	108.00	
1 Coffret Gloire de Paris.....	136.00	136.00	
1 “ Bridalis		121.50	
1 “ Rose Paul Neyron.....		109.50	
1 “ Fleur d'Amour		55.00	
1 “ Rose Rouge		66.00	
1 dz. Savons 795.....		28.50	
/6 “ Raziors No. 150.....	144.00	24.00	
/6 “ “ “ 71.....	87.00	14.50	
/6 “ “ “ 80.....	87.00	14.50	
/6 “ “ “ 68.....	80.00	14.00	
36 “ Extraits assortis R. G.....	68.80	2,476.80	
27 “ 3/4 “ “ R. G.....	103.75	2,879.10	
3 “ “ Serie Vera-Viol	94.75	284.25	
a Reporter.....		6,973.40	

35

Specialites en Parfumeries.

C. Regnier,

9 Faubg. Poissonniere.

Monsieur Ketzal, 6 Rue Rouget de Lisle, Paris.

	Emballage		145
14	Coffrets R. G.	16.00	224
6	dz. ½ Extraits Piver	126.25	820
1	" Poudre a sachet	37.80	37
5	" " Piver	54.00	270
300	" " Java	25.50	7,650
19	" ½ Poudre Java	24.00	468
500	" Pommade Rosat	11.00	5,500
5	Coffrets N 6 Gloire de Paris	136.00	680
5	" N 7 Bridalis	106.00	530
6	" 3794 Fl. d'Amour	55.00	330
6	" 4334 Rose Rouge	66.00	396
6	" 4094 Nuguet	66.00	396
6	" 4354 Fleur du Passe	77.00	462
6	" N 9 Bridalis-Violette Rubie	80.50	483
12	" N 10 Rose Paul Neyron—Oeillet— Cyclamen	40.00	480
2	Salvia, 2 Vera Violette, 2 Nuguet de Mai, 2 Oeillet Marguerite, 1 Indian Hays, 1 Heliotrope bleue, 1 giroflie, 1 Peau d'Es- pagne.		

18,872

Affidavit of Leon J. Katzel.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,

County of New York, ss:

Leon J. Katzel, being duly sworn says:

I am the husband of the defendant herein, and reside at 706 Mirmont Place, Borough of the Bronx, New York City. I have been a registered pharmacist for the past twenty-five years (25), during which time I have worked in or owned and operated several pharmacies in the State of New York and elsewhere in the United States. Since 1918, my principal business has been importing perfumery, toilet preparations, toilet articles and druggists' sundries of foreign manufacture.

In the course of my business as an importer, I have made two trips to France for the purpose of buying merchandise of the above mentioned character, and while in France I bought for and shipped Anna Katzel, the defendant herein, merchandise of such character. Between January and July, 1920, I made several purchases of "Java" face powder in the open market in Paris, France, from two reputable perfumery merchants. From one, whom I designate "A" for the reasons hereinafter set forth, I purchased twenty-four (24) dozen boxes of said face powder. He is a retail merchant, with an established business of long standing and high reputation in the trade in Paris. From the other whom I designate "B" for like reasons, I purchased five hundred and sixteen (516) dozen boxes of said face powder. Said merchant has an extensive wholesale establishment of long standing and good reputation in the trade in Paris. The reason why I designate said merchants herein as "A" and "B," and not by their proper names, is because, I believe that the present action is not maintained by the plaintiff in good faith but to enable me to communicate with A. Bourjois & Cie of Paris, France, or some other interests in France for the purpose of harassing any merchants in said City who sell "Java" face powder to buyers who import the same into the United States and offer it for sale to the public in the United States at a lower price than that demanded by the plaintiff; and that, if the plaintiff does not succeed in the present action, it will also in the above or some other manner seek to shut off the defendant's supply of said "Java" face powder, and prevent her and me from deriving the profits and benefits to which we are entitled by reason of the enterprise, energy and money that we have put into the establishment of said import business. As evidence of the defendant's and my good faith, I beg leave to submit to the Court

upon the argument or final submission of this motion, in a sealed envelope for the Court's inspection only, the true names of the above merchants designated "A" and "B," together with the bills covering my purchases of said "Java" face powder and other extensive pur-

38 chases made of them by me between January and July, 1913. Said boxes of "Java" face powder so purchased by me in Paris, France, were in all respects the same as "Defendant's Exhibit I," which I have examined, except that there are four different colors designated "Blanche," "Naturelle," "Rose" and "Rachel"; and all said powder was purchased by me as genuine "Java" face powder, manufactured, boxed, packed and labeled by A. Bourjois & Cie of Paris, France, and was so represented by the sellers. Said purchases were made by me without condition or restriction of any kind as to the ultimate destination of said powder or the disposition of said powder by me. I shipped said boxes of "Java" face powder to my wife, Anna Katzel, in the United States and the same has been imported at various times into the United States by said Anna Katzel.

While in Paris, France, on numerous occasions I saw boxes of "Java" face powder openly offered for sale in several department stores and perfumery establishments, and said boxes of powder so offered were in all respects the same as "Defendant's Exhibit I," except for the variation in color designation, as aforesaid. Among other places where I saw such boxes of powder offered for sale were the Galleries Lafayette, Printemps, Samaritan, Troi Quartie, department stores in Paris, France. I know that said box of "Java" face powder is a well-known and widely sold article in Paris, France.

The landed cost in the United States of said boxes of "Java" face powder bought by me in Paris, including import duty, amounts to about Three dollars (\$3.00) per dozen boxes. The "Java" face powder represented to be put up in the United States by the 39 plaintiff, A. Bourjois & Co., Inc., of New York, costs Forty and 50/100 dollars (\$4.50) per dozen boxes.

For many years I have been familiar with "Java" face powder sold in France and in the United States. As sold in France during said time, said powder was put up in boxes in all respects the same as "Defendant's Exhibit I," except for the variation in color designation, as aforesaid. Prior to July 5, 1913, as sold, dealt in and used in the United States, said powder was also put up in boxes in all respects the same as "Defendant's Exhibit I," except for the variation above mentioned. Said powder has always been cheap in price, and common in quality as compared with other face powder in the United States and French markets.

I am familiar with the prices of all well-known face powders of French manufacture which are in demand in the United States and I aver that the fact to be that the retail trade in and about New York requires a much superior article to "Java" which retails at from thirty-nine cents (39c) to fifty cents (50c) per box. As a rule the consumers in said locality rely for the most part upon the following well-known brands: Djer Kiss, Coty, Piver, Mary Garden, Houbigant, and Roger and Gallet, which powders retail at from seventy

five cents (75c) to Two and 25/100 dollars (\$2.25) per box. Prior to July 5, 1913, "Java" face powder was sold at retail in the United States as low as eighteen cents (18c) per box.

LEON J. KATZEL.

Subscribed and sworn to before me this 9th day of November, 1920.

[SEAL.]

FRANCIS X. NICASTRO,
Notary Public.

40

Affidavit of H. C. Stuart.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,

County of New York, ss:

H. C. Stuart, being duly sworn, says:

I am Special Deputy Collector of Customs at the Port of New York.

The question of the right of importation of certain boxes of Java face powder, imported by Anna Katzel, through the American Express Company, as being in violation of the registered trade mark of A. Bourjois & Co., Inc., of New York, was recently passed upon by this office. In view of the report of the Government Examiner, that the powder was the genuine article, and not a copy or simulation thereof, it was decided under the authority of *Gretsch Mfg. Co. v. Schoening*, 238 Fed. 780, to be entitled to entry.

H. C. STUART,
Spec. Dep. Collector.

Sworn to before me this 10th day of November, 1920.

[SEAL.]

C. A. UNGER,
Notary Public of Kings and New York Counties.

41

Affidavit of William A. McDevitt.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,

County of New York, ss:

William A. McDevitt, being duly sworn says:

I am in the United States Customs Service at the Port of New York, and since January 1, 1920, have been the examiner of perfumery and toilet preparations, including face powders imported from France. During said time I have had before me for examination boxes of "Java" face powder imported from France, and have seen and examined the same.

I have recently seen a box of "Java" face powder submitted to me by counsel for the defendant herein, marked "Defendant's Exhibit I." Said box appears to be in all respects the same as all boxes of "Java" face powders imported from France which have been before me for official examination. I did not open "Defendant's Exhibit I."

42 In my judgment "Defendant's Exhibit I" herein is a genuine package of "Java" face powder as put up and labeled by A. Bourjois & Cie of Paris, France. I base my judgment not only on my experience as examiner, but also on a careful comparison made between the box marked "Defendant's Exhibit I" and certain illustrations of the genuine box of "Java" face powder as packed in France, said illustrations being contained in an illustrated catalogue issued by A. Bourjois & Cie of Paris, France at page 7 thereof, which is used by me in the course of my official duties. I cannot attach said catalogue to this affidavit because it is Government property. Among other identifying marks on "Defendant's Exhibit I" indicating its genuineness are the guarantee stamp to the right of the closing band on said box, and the stamp of the "Manufacturers' Union for the Prevention of Counterfeits," to the left of the closing band on said box.

WILLIAM A. McDEVITT.

Subscribed and sworn to before me this 10th day of November, 1920.

[SEAL.]

ELYAH NEWMAN,
Notary Public.

43

Stipulation.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

Defendant's counsel producing "Defendant's Exhibit III" with the suggestion that a stipulation be entered into covering the said exhibit, plaintiff's counsel stipulates as follows:

That boxes of substantially the same appearance and bearing substantially the same labels were marketed by the plaintiff company from 1913 to about 1916, the then existing Patent Office registrations, of which the plaintiff was the owner by assignment being, for the top label Certificate No. 89,313 of December 3rd, 1912, referred to in the bill of complaint, the trade-mark "Java" being separately registered under No. 15,983 on November 6th, 1888, of which certificate plaintiff also is and has been the record owner since its organization. The bottom label of said "Defendant's Exhibit III" is shown in the registration obtained by the plaintiff on an application filed January 22nd, 1916, No. 111,177 issued July 4th, 1916, said bottom label being the immediate predecessor of the plaintiff's present bottom label used continuously and exclusively since approximately 1916 and shown in plaintiff's registration No. 122,674 of September 10th, 1918.

Dated, November 16th, 1920.

BRIESEN & SCHRENK,
Attorneys for Plaintiff.
JOHN B. DOYLE,
Attorney for Defendant.

Reply Affidavit of Bernard M. Douglas.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,

County of New York, ss:

Bernard M. Douglas, being duly sworn, says:

That he is general manager of A. Bourjois & Co., Inc. the plaintiff, and is an officer of the company; that he has been connected

in this capacity with the plaintiff from a date shortly following plaintiff's organization in 1913; that he is entirely familiar with the face powder trade both with respect to dealers and with respect to consumers, and he knows that so far as the United States is concerned, the trade as well as the public know and recognize the trade mark "Java" as representing the merchandise packed, labeled and distributed by the plaintiff and that the trade mark "Java" whenever it appears in connection with face powders indicates to the trade and to the public generally the output of the plaintiff company; that this is true with respect to dealers and merchants generally is obvious from the circumstances that for the last seven years "Java" face powder has been distributed in enormous quantities throughout the United States solely by the plaintiff and by no one else except in some cases where infringements were attempted, in which cases, however, the infringements were invariably prosecuted and suppressed.

That so far as the public in general is concerned, possibly the best evidence of the wide spread recognition of this plaintiff as the source or origin of the face powder labeled "Java" is concerned will be found in the large volume of correspondence which comes to the plaintiff daily from all over the country from individual consumers. For the purpose of demonstrating how wide spread the public familiarity with the plaintiff as the proprietor of the "Java" trade mark is, I have picked at random from one of our files a handful of letters from consumers. These are merely representative of an unlimited quantity of other letters of the same general character in plaintiff's possession. These letters which are produced have not been specially selected but have been picked out of the file just as they happened to appear therein but at that they show a demand for the plaintiff's "Java" powder on the part of individual consumers from Martinsburg, West Virginia, Cannon Falls, Minnesota, Northfield, Vermont, New York City, Old Forge, Herkimer County, N. Y., Brockton, Mass., Postville, Iowa, New Castle, New Hampshire, Covington, Ky., Austin, Illinois, Deer Lodge, Montana, Macon, Ga., Plainfield, N. J. These letters, produced herewith, are identified as "Plaintiff's Exhibit M." It is absolutely a fact that the trade mark "Java" and the general appearance of the plaintiff boxes are recognized and accepted throughout the United States as indicating as the source and origin of the merchandise the plaintiff company, and if any of such boxes as we are accustomed to place upon the market should contain material which is not satisfactory to the consumer, the plaintiff is held responsible. The contents of the boxes is manufactured in France and as it comes to the plaintiff it is frequently found that for the purposes of the American market the powder will require special handling such as sifting or recoloring in order to meet the requirements of the American public. When it has passed the plaintiff's inspection and selection as to color adjustment, etc., and is or has been made to correspond with plaintiff's standard fineness of texture, the powder is then packed in plaintiff's boxes made in America and provided with plaintiff's labels, all printed in America, and the package then, when

completed and not before then, becomes the "Java" face powder which is known in this country and there enjoys a wide and favorable reputation. It occasionally happens that due to defective handling in transportation or otherwise, the boxes break, and occasionally too the texture of the powder may not be satisfactory to some distributors and whenever any such contingencies arise the complaint or demand for redress is made to the plaintiff, who is held responsible throughout the country for everything that is not perfect or 100% up to standard with respect to any face powder sold under the "Java" labels. As an illustration of many similar cases, we have produced herewith as "Exhibit N" a complaint of this kind sent in from a drug company in Tampa, Florida. Many other similar trade claims could be produced and "Exhibit N" is simply the most recent readily available specimen.

There have been cases in the past in which users of "Java" face powder complained that it had an injurious effect upon the complexion and any such complaints naturally are, in the first instance, asserted against the plaintiff. Upon investigation, however, it was found that whenever such complaint was made the consumer was using a counterfeit which was then, at great expense to the plaintiff company, suppressed and driven from the market. The plaintiff's genuine "Java" face powder has at all times been of standard excellence, containing materials which are in no sense injurious to the complexion but which are, if anything, beneficial thereto. If however, "Java" face powders are permitted to appear upon the market, which powders have not passed plaintiff's inspection and which have not received plaintiff's careful attention with respect to quality, ingredients, etc., the plaintiff's carefully built up business, which is very large, can be completely ruined. The defendant asserts that her "Java" powder is purchased in France but naturally the plaintiff, having no control over what takes place in France, is not responsible for the contents of those boxes and has no means of exercising control over such contents, but should there be anything amiss with the contents, the plaintiff will be held responsible therefor by the public and by all dealers. The only protection which the plaintiff has in that respect is to insist upon its trade mark rights that any face powder sold in the United States under the trade mark "Java" or under labels like or similar thereto, shall be only of plaintiff's selection, packing, etc., and shall not be permitted to appear as "Java" or under similar labels through any other source or agency than the plaintiff, which is in the United States the sole proprietor of the trade mark rights.

A circumstance that is considered very important by the affiant in this connection is the fact that the French word for face powder is "poudre de riz", which literally translated reads "rice powder". Now rice powder is an undesirable ingredient of face powders and there is no rice powder in the product which the plaintiff markets under the "Java" trade mark and the plaintiff's labels do not contain any statement that the contents is "poudre de riz" but state that the contents is "poudre Java". The public through-

out the entire United States is being and has been widely educated to realize and to believe that if a powder is "poudre de riz" or contains rice powder, it is injurious and harmful and the advertisement of one of plaintiff's most active competitors, produced herewith, "Exhibit O", shows how the public is being made to realize that they should avoid purchasing face powders containing rice powder. When, therefore, boxes of "Java" powder which the public believe emanate from our concern by reason of the appearance of the boxes and the trade mark "Java" are brought upon the American market under the designation "poudre de riz", the public will be likely to believe that the plaintiff's "Java" powder contains rice powder and the appearance of such boxes on the market as the defendant's, may also give our competitors a weapon upon the basis of which to attack our product by calling public attention to the fact that "Java" face powder is appearing upon the market as "poudre de riz".

Affiant further calls attention to the fact that many states of the United States have local pure drug acts, some of which are interpreted as making it unlawful to market a box labeled "poudre de riz" if it does not contain rice powder. If any of the boxes like defendant's boxes should appear in any of such localities, it would result in a holding or order which would apparently condemn the "Java" face powder as an unlawful commodity besides implying that the "Java" face powder probably does contain the ingredients recognized as deleterious to face powder. There are so many angles and points of view from which plaintiff is exposed to irreparable damage if boxes like the defendant's shall be permitted to be distributed in the American market, that no course is open to plaintiff except an appeal to the Courts. If, as defendant's affidavits insinuate, the defendant purchases her powder from France, there

50 is no objection whatsoever to the repacking of such powder in any boxes of defendant's selection which do not simulate the plaintiff's box, nor can there be any objection to the defendant's distributing any such powder so bought in France under labels which designate the manufacturer of the powder itself in France, but there is every objection against the defendant designating her powders as "Java" or selling them in packages similar to plaintiff's "Java" packages when the powder is not that which is recognized throughout the United States as being "Java", to wit, the product which in this country is exclusively handled, selected, controlled, packed and labeled by the plaintiff. "Java" face powder throughout the United States means face powder which appears in the market under the plaintiff's supervision and guarantee, and this conception excludes in the public mind any face powder similarly marked or labeled which has not the plaintiff's reputation and standing behind it. Every purchaser of defendant's product in the United States will undoubtedly, in the opinion of this affiant, be deceived into the belief that it emanates from the plaintiff and will in his own mind, if there is anything whatsoever wrong with the contents or the packing, hold the plaintiff responsible. Not only therefore, do the plaintiff's rights require protection but a consider

ation of the rights of the public demands that the defendant desist from distributing its simulating boxes in this country.

Whatever may be the condition in France or other countries, this affiant is not concerned with and so far as this affiant knows, the defendant is free to resell whatever she buys in France in European countries and undoubtedly the sale of defendant's boxes to defendant's agent (the details of which are concealed from this affiant by the defendant) was not made upon the understanding that the merchandise should be exported to invade the American market and there to do injury to the plaintiff's well established rights. In this line of business it is a well established custom in France that goods are not sold for resale in international commerce unless that fact is stated and noted at the time the purchase is made and such understandings, although possibly not lawful in the United States, as I understand it, are entirely lawful in France. Affiant is, therefore, of the opinion that this circumstance, coupled with the fact that defendant declines to disclose the source of her merchandise, indicates that even with respect to the defendant's purchase of the merchandise in Paris deception was probably practised and the purchase made either upon statements which mislead or upon acts which were furtively deceptive.

The plaintiff has had a great deal of trouble in suppressing counterfeits, some of which are so perfect that it is next to impossible to identify them as counterfeits. Although the suppression of such counterfeits causes great difficulties and involves large outlays for detectives and lawyers, plaintiff has been able to stamp out all of such counterfeits that have appeared upon the United States market. If, however, counterfeits should be prepared abroad and shipped into this country, the proof of counterfeiting could probably never be obtained. Affiant, therefore, greatly fears that the establishment of the defendant's position that boxes looking exactly like the defendant's boxes can be freely brought into the United States, may open the door to a counterfeiting scheme which will originate in Europe and, not injuring any European manufacturer, may go on unchecked until the evil reputation of the products marketed under the counterfeit labels in the United States will have completely destroyed plaintiff's reputation in business. Should it ever be established that boxes like the defendant's can be imported into this country and sold here despite the fact that such boxes to the public at large throughout the United States mean that they are the plaintiff's boxes and products, then the burden of proof to show that a particular box is a counterfeit would always be on the plaintiff and, of course, such a burden could not be met if the counterfeiter is sufficiently skillful, labels being only a matter of perfection of printing. Affiant is of the belief that considering the fact that defendant's boxes and the trade mark "Java" in the United States mean that the boxes are the output of A. Bourjois & Co., Inc., the New York Corporation, the plaintiff, no outsider, no matter who he is or under what circumstances he purchases or acquires similar goods, should be permitted to sell them in the United States unless they are the genuine boxes of the plaintiff.

BERNARD M. DOUGLAS.

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A. BOURJOIS & CO., INC., VS. ANNA KATZEL.

Sworn to before me this 11th day of November, 1920.

[SEAL.]

FRED A. KLEIN,

Notary Public, Richmond County.

Certificate filed in New York County.

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PLAINTIFF'S EXHIBIT M.

Macon, Ga., Oct. 28, 1920.

A. Bourjois & Co., Inc.,
35 West 34th Street:

Enclosed find \$1.00 for which send Java face powder in white
50 cts. and one in flesh 50 cts.

Yours truly,

MRS. J. W. SHINHOKER,
445 College St., Macon, Ga.

A. Bourjois & Co.,
New York.

DEAR SIR:

I am enclosing \$1.00 (one dollar) for which will you please send
me two boxes of Java Face Powder. One flesh color and one
brunette.

Oblige,

MRS. FRED MANNIX,
Deer Lodge, Montana.

54

1053 Leamington Ave.,
Austin, Ill., Oct. 5, 1920.

A. Bourjois & Co., Inc.,
35 W. 34th St.,
New York City.

DEAR SIR:

Find enclosed 60 cents in stamps for postage and a fifty cent box
of Java Face Powder.

Yours truly,

MISS S. MALMBORG.

Sept. 3rd, 1920.

A. Bourjois & Co., Inc.,
New York.

GENTLEMEN:

Enclosed herewith please find 50c. in stamps for which I would
like for you to send me a box of your Java Face Powder, Blanche
shade.

Yours truly,

MISS LEONA BOGENSHUTZ,
#15 West 19th St., Covington, Ky.

55

Aug. 2nd.

A. Bourjois & Co.:

Kindly send me a large box of Java Face Powder for which I am enclosing 50 cts. & 2 stamps for postage.

Yours truly,

Miss N. BOOKMAN,
Hotel Wentworth, Newcastle, N. H.

DEAR SIRs:

Postville, Iowa, Oct. 12, 1920.

Inclosed find money order for \$1.00 (and stamps for postage .03 cts.) for which please send me box of Java face powder, color "Naturelle," and box of rouge (not too dark).

I am unable to get it here.

Respectfully,

Mrs. ELIZABETH VALLIANT,
Postville, Iowa.

18 Lincoln St., Brockton, Mass.

DEAR SIRs:

Enclosed please find fifty cents in two cent stamps for which send me a box of Java face Powder "Rose."

Yours truly,

GERTRUDE SHAYER.

56

Little Moose Lodge,

Adirondack League Club.

P. O., Old Forge, Herkimer Co., New York.

A. Bourjois & Co.,
New York City.

Oct. 23, 1920.

GENTLEMEN:

Saw your adv. in Harper's Bazaar. Kindly send me 1 box Java Face Powder (Pink) Ashes of Roses (Medium).

Yours truly,

Miss H. STEVENS.

Enc. 1.00.

21 East 108 St.,

DEAR SIRs:

New York, Oct. 28, 1920.

Kindly send to the above address a box of your Java face powder, for which I enclose 50c. in stamps. I prefer white.

Your prompt attention will be greatly appreciated.

Yours very truly,

SUZANNE SMITH.

Enc.

57 Address Mrs. Lulu Tullar, #1 North Main St., Northfield, Vt.

Please find enclosed 50c. in stamps for a box of Bourjois "Java" face powder in the cream tint. Please mail to address given above as soon as possible.

Most sincerely,

MRS. LULU TULLAR.

Mineral Springs, October 13, 1920.

DEAR SIR:

I thought I would write to you for a large box 50c. Java face powder and a box of 35c. rouge. I am sending you this money to and if you haven't got it send me my money back or send me some other face powder and rouge well I guess I'll have to close.

Very truly yours,

MISS M. LA ROCHE.

Send as soon as possible.

My address: Miss La Roche, Mineral Springs Sanatorium, Cannon Falls, Minn.

58

March 30th, 1920,
P. O. Box 502,
Martinsburg, West Va.

A. Bourjois & Company,
New York, N. Y.

GENTLEMEN:

Please mail me two (2) boxes of your "Java" face powder.

Thanking you, I am

Very truly,

M. GANTZ.

3-30-20.

October 20, 1920.

Miss A. Daly,
67 Summit Ave.,
N. Plainfield, N. J.

DEAR MADAM:

We are in receipt of your letter of October 17th with enclosure of 27c. in stamps, for which you ask us to send you one Java Lip Stick. Our Lip Sticks do not bear the name Java.

We have forwarded your order and remittance to Lord & Taylor, of this city, who will promptly send you one Lip Stick No. 144N.

Thanking you for your kind order, we remain

Yours very truly,

A. BOURJOIS & CO., INC.

P. H. D. A. B.

PLAINTIFF'S EXHIBIT N.

W. G. Allen, President.

J. O. Weatherwax, Cashier.

C. O. Copp, Secretary.

Tampa Drug Company,
South Florida's Wholesale Drug House,
Cor. Florida Ave. and Washington St.,
Tampa, Florida.

A. Bourjois & Co.,
New York.

GENTLEMEN :

In rearranging and cleaning up our stock we find that we have on hand the following items of your manufacture: $\frac{1}{2}$ doz. Java Rice Po., Bursted.

These items are damaged and in an unsalable condition due to —. New labels and wrappers would be of no benefit to us as goods are unfit to send out to our trade.

We also have on hand the following—.

The labels and wrappers of these items are soiled but contents seem to be in good condition and would ask you to kindly advise disposition of these goods, believing it is to yours as well as our own mutual benefit to send out your goods in good salable condition.

Thanking you in advance for your courtesy in the matter and awaiting an early reply, we beg to remain,

Very truly yours,

TAMPA DRUG COMPANY.

In reply refer to: M.

NOTE.—The foregoing exhibit is all on a regular printed form of Tampa Drug Company, except the words "A. Bourjois & Co., New York," and " $\frac{1}{2}$ doz. Java Rice Po. Bursted," which are written in pencil.

PLAINTIFF'S EXHIBIT O.

La-may Face Powder is Guaranteed Pure and Harmless.

Pure face powder cannot injure the most delicate baby skin. The trouble is, too many powders are made in the old-fashioned way, with rice powder. Rice powder is starchy, and, like bread flour, it is quickly turned into a gluey paste by the moisture of the skin. This paste clogs the cuticle, swells in the pores, causing en-

larged pores, blackheads and pimples. A specialist makes a harmless powder by using an ingredient doctors prescribe to beautify the skin. Every time you apply this improved powder you give your complexion a real beauty treatment. There is a thousand dollar guarantee of purity printed on the box, certifying it does not contain white lead, rice powder or any harmful substance. This guaranteed pure powder is called La-may (French Poudre L'Ame). Because it is pure and harmless, La-may is now used by over a million American women; it is now the most popular complexion powder sold in New York. Women who have used even the most expensive face powders say La-may stays on better than any other; they say they cannot buy a better powder than La-may anywhere at any price. There is also a La-may Talcum that prevents the souring of perspiration.

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Reply Affidavit of John G. O'Connell.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

STATE OF NEW YORK,

County of New York, ss:

John G. O'Connell, being duly sworn, says:

That he is of mature age and that his occupation is buyer for B. Altman & Co. in the perfumery department and that he has been engaged in this occupation for the last twenty years or more; that he is fully acquainted with conditions prevailing throughout the United States in the market which deals in face powders and with the public that are accustomed to purchase such products.

That as a person having personal familiarity with the situation and also as an individual who knows the conditions of the trade and of the public at large in this field, he testifies that the trade mark "Java" for face powder is universally recognized in the United States as the property of A. Bourjois & Co., Inc., a New York corporation which for many years past has been the sole and
 63 exclusive distributor of face powder under that trade mark and that the get-up and dress of the packages under which the "Java" face powder of A. Bourjois & Co., Inc. is placed upon the market are universally known and recognized throughout the United States as representing the output of A. Bourjois & Co., Inc. and that any average dealer or purchaser, seeing a box of similar get-up, would immediately associate the appearance of said box with A. Bourjois & Co., Inc., as the source or origin thereof. It is well understood that the contents of these boxes is initially manufactured in Paris by a French concern, A. Bourjois & Cie, and many face

powders manufactured by the same concern are upon the market under various trade marks, but the trade mark "Java" and the general appearance and get-up of the "Java" face powder boxes is, so far as the United States is concerned, the indication and proof that the contents while made by a French concern, emanates from the New York Company, A. Bourjois & Co., Inc., and represents the selection, special treatments, packing and get-up of the New York Company. Affiant has been shown the box claimed in this case to represent the defendant's product and he states that this box, to him, would indicate and imply, being marked with the "Java" trade mark, that A. Bourjois & Co., Inc., was responsible for its distribution and was concerned in its selection, packing, labeling, etc. If affiant had any boxes of that kind in stock in his place of business and there were any defect therein, or if any complaints were received with respect to any such boxes, he would consider that A. Bourjois & Co., Inc., the New York Corporation, were responsible and would have to make good.

JOHN G. O'CONNELL.

Sworn to before me this 11th day of November, 1920.

[SEAL.]

FRED A. KLEIN,

Notary Public, Richmond County.

Certificate filed in New York County.

Opinion of Mayer, District Judge.

United States District Court, Southern District of New York.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

Briesen & Schrenk, Attorneys for the Plaintiff (Hans V. Briesen, of counsel), of New York City.

John B. Doyle, Attorney for the Defendant (John B. Doyle and John R. Rafter, of counsel), of New York City.

MAYER, District Judge:

The plaintiff, a New York corporation, is the exclusive owner of certain registered trade marks for face powder, these trade marks consisting of the word "Java," and the various labels, which are carried by plaintiff's boxes and serve to identify them as plaintiff's products. Defendant's boxes, as will appear infra, are, with two differences, exact duplicates of plaintiff's boxes. In 1912, the firm of E. Wertheimer & Cie., of France, successors of A. Bourjois & Cie, also of France, had established in the United States the business in Java face powder in boxes and under labels substantially the same as those in controversy. The trade mark

"Java" was considered and favorably recognized in *Wertheimer al. v. Batcheller Importing Co.*, 185 F. R. 850. The plaintiff corporation was organized in 1913, and for a consideration, involving inter alia the obligation to pay \$400,000, bought the entire business then and theretofore carried on by A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs, in the United States, viz.: the entire good will of said business in the United States and any and all trademarks, trade names and trade mark rights relating thereto in the United States and also the sole and exclusive right to manufacture and sell in the United States any and all toilet preparations then theretofore made by the French concern. This transfer of trademarks included the transfer of the registered trade mark "Java," the top and other labels of the boxes; and all of the trade marks which the plaintiff has subsequently used were re-registered. Thus, all of these trade marks and labels are, so far as the United States is concerned, exclusively the property of the plaintiff. It appears from the papers that during the time plaintiff has been in this business, it has expended substantial sums of money for advertising and, in brief, by reason of its business methods it has succeeded in creating a wide market in the United States for its products and the boxes of face powder here under consideration are associated in the public mind with the plaintiff corporation. In other words, it appears that plaintiff has built up not only an extensive and important business, but also an excellent business reputation for the character of its goods and that the plaintiff depends in greatest measure upon its trade marks to prevent invasion of its rights.

Plaintiff, apparently from its inception, has bought and is continuing to buy the powder in bulk from the French firm, A. Bourjois & Cie., and then puts up this powder in the boxes containing the trade mark inscriptions. Plaintiff, however, may buy powder from any house and will obviously do a favorable business in connection with its trade marks, as long as it satisfies the public because one of the assets plaintiff has developed is the assurance to the public of the responsible character of any merchandise which appears upon the market under plaintiff's trade marks or in the "get-up" of plaintiff's packages. Two outstanding features of plaintiff's package are the words "Poudre Java" and "A. Bourjois & Cie."

On the argument of the motion, certain papers were inspected by the Court which fully satisfied the Court that the box or package of defendant was the genuine box or package of the French firm A. Bourjois & Cie., and that defendant had bought abroad the face powder contained in the genuine boxes or packages put up by the French firm. Those boxes or packages, the product of A. Bourjois & Cie., in France, were imported by defendant into this country.

The two differences referred to, supra, were as follows: (1) At the beginning of its business, plaintiff New York corporation put the product out under the name of "Poudre de Riz de Java." As re-

is regarded as a deleterious ingredient for face powder, plaintiff dropped the words "de riz" and adopted the words "Poudre Java." Under this latter name, plaintiff has marketed its goods for about four years last past. An inspection of plaintiff's and defendant's boxes would at once show that this difference is slight and that the ordinary purchaser would not stop to distinguish between the boxes, and, if defendant's box were a counterfeit or imitation, a Court of Equity would at once issue its injunction. In addition, if the plaintiff is right as to the undesirable nature of a rice ingredient, a label containing the words "de riz" might unfavorably affect the sale of plaintiff's product, if the purchaser associated the package with plaintiff.

(2) The second difference is that on the back of plaintiff's box or package are the following words: "Trade Marks Reg. U. S. Pat. Off. Made in France—packed in the U. S. A. by A. Bourjois & Co., Inc., of New York, Succ'rs in the U. S. to A. Bourjois & Cie. and E. Wertheimer & Cie." These words are so situated and so printed as fairly to come to the attention of the purchaser and one of affiants, who has sworn that this package is regarded by the public as plaintiff's product, is the buyer in the perfumery department of the large establishment known as B. Altman & Co.

68 As the defendant's box or package is manufactured and sold in France, the words just quoted do not appear upon it. It is urged by defendant that plaintiff's product is a misrepresentation and in the nature of a fraud upon the public in that it gives the impression that it is manufactured and put up in the original packages in France; but opposed to this argument are the affidavits submitted by plaintiff which are convincing upon the point that the boxes are identified by the public as plaintiff's product, and further, as appears *supra*, plaintiff has been careful to state upon its box or package that while the product is made in France it is packed in this country by the American firm as successors in the United States to A. Bourjois & Cie. and E. Wertheimer & Cie.

There remain for consideration, then, the important question in the case, which seems to be one of first impression, and that is whether because defendant's box is a genuine article made and sold by the French concern it can be said to constitute an infringement of the trade-marks of plaintiff, when plaintiff is the exclusive owner of these trade-marks in the United States.

In approaching the subject, it must be remembered that "the right of property in trade marks has come to be recognized as of immense and incalculable value" and that the "proprietor of a trade mark by virtue of the manufacture or offering for sale of his goods is entitled to the protection which the highest powers of the court can afford."

Scandinavia Belting Co. v. Asbestos & Rubber Works, 257 F. R. 937.

69 In Hanover Star Milling Co. v. Metcalf, 240 U. S. 403, the Court in discussing common law trade marks points out

that redress is based upon the party's right to be protected in the good will of the trade or business; and the English rule that a trade mark is not the subject of property, except in connection with an existing business, prevails generally in this country. In *Scandinavia via Belting Co. v. Asbestos & Rubber Works*, supra, the Court held that the owner of a registered trade mark can restrain its use by another though no loss of sales is shown and though there may be no fraud between the original seller and buyer of the infringing article.

This is but another way of saying that where a trade mark is used in connection with the business of a merchant and the product sells on the strength of the trade mark and because it is associated in the public mind with the plaintiff's product, such a trade mark is entitled to the strongest protection at the hands of the proper court.

Defendant's trade mark is genuine in the sense that it was not spurious at the place of origin and that no change has been made since it was sold; but, it is genuine as matter of law only if defendant has the right to sell within the territory where plaintiff is the exclusive owner of the trade mark and under the doctrine of the *Hanover Star Milling Company* case, supra, where, also, plaintiff has established the business in the product in connection with the trade mark.

The case at bar is obviously stronger than that considered in the *Hanover Star Milling Company* case. In the case at bar, plaintiff

70 has expended a large sum for the acquisition of the trade mark title and rights, and a large sum for the advertisement of its business. Plaintiff had corralled the American market before defendant's boxes were brought into the American market. If, now, the original French boxes or packages can lawfully be permitted to compete with plaintiff's boxes or packages, it can be readily seen that plaintiff's business may be destroyed, and, in any event, impaired. The question, on its face, is one involving business interests in a large way. If an American business concern buys all of the rights, as in the case at bar, of a business established here by a foreign concern and then the foreign concern is nevertheless at liberty to compete with the American concern, the result will be that the purchase of rights, under such circumstances, will give little or no protection; and the foreign concern as well as the domestic concern will be seriously injured in the long run, because American capital certainly will not be invested and foreign concerns will find it difficult to sell the rights which they have developed in this country.

It should be said in justice to *A. Bourjois & Cie. of France* that there is nothing in the record which justifies the conclusion that this competition has been undertaken with their knowledge or consent, and it should be said in justice to defendant that thus far defendant has relied upon what she regards as her legal rights. The question is one of law which calls for definite and prompt settlement.

In support of the position of defendant, the case of *Fred Gretsch Mfg. Co. v. Schoening et al.*, 238 F. R. 780, is cited. That case

involved a construction of Section 27 of the Act of February 20, 1905. That section was in the nature of a Customs Regulation to prevent the American public from being deceived by simulated names. In other words, simulated trade marks are to be excluded from importation, so as to safeguard the American public; but there is nothing in that section which was intended or purported to pass upon the question as to whether any given trade mark was valid as matter of law as between contending parties. Under Section 27, the Customs authorities may only exclude an article "of imported merchandise which shall copy or simulate the name of any domestic manufacturer * * *." Thus, if an article is genuine, in the sense of defendant's box, it may be imported into this country and cannot be stopped at the door of the Custom House; but, whether or not the article may be marketed here under a particular trade mark is a question to be determined in ascertaining the rights of parties, quite irrespective of Section 27 of the Act of February 20, 1905. Section 27 concerns the action of the Government through its proper officials in carrying out the safeguarding measures erected by the Congress. The case at bar concerns the rights of private parties and these rights depend upon rules of law in respect of which Section 27 is wholly irrelevant. In the Gretsch case, the question here presented did not arise. There was no situation, such as this, where the original owner of the business and its trade-marks had completely parted therewith to a licensee who had proceeded upon the strength of his ownership to develop an American market. For the reasons thus outlined, I am of the opinion that plaintiff is entitled to the exclusion of defendant's boxes from this market and the motion for a preliminary injunction is, therefore, granted.

JULIUS M. MAYER,
District Judge.

December, 1920.

Addendum.

Under the Clayton Act it will be necessary for plaintiff to give security. This amount will be fixed upon the settlement of the order. On the other hand, as the question is novel and defendant is a small dealer and, as the Court gathered on the argument that the plaintiff is more concerned with a settlement of the question of law than was with the sale of the small amount of merchandise in defendant's possession, the injunction will be suspended on defendant's giving security on appeal in a nominal amount, and provided also that if defendant intends to appeal, she shall do so promptly. Submit order on two days' notice.

J. M. M.,
D. J.

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Injunction Order Appealed From.

At a Stated Term in the United States District Court for the Southern District of New York Held at the Court Rooms of said Court in the Old Post Office Building, in the Borough of Manhattan, City and State of New York, this 3rd Day of January, 1921.

Present: Hon. Julius M. Mayer, U. S. District Judge.

In Equity.

No. 19/233.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

This cause came on to be heard at this term and was argued by counsel for the respective parties and thereupon, upon consideration thereof, it is

Ordered that the plaintiff is entitled to the relief of a preliminary injunction, it appearing to the Court that the plaintiff is the legal owner in the United States of the sole and exclusive right to market face powder in packages bearing the registered trade mark of the plaintiff, that the defendant's face powder packages are to all practical effect substantially the same as or identical with the plaintiff's packages and that the introduction of the defendant's imported merchandise to the American market is likely to interfere with the plaintiff's business and invade the plaintiff's legal rights; and it is further

74 Ordered that upon the plaintiff's giving of security, approved by the Court, in the sum of \$2,000, which this Court deems the proper amount under all of the circumstances of the case, conditioned upon the payment of such costs and damages as may be incurred or suffered by the defendant in case she is found to have been wrongfully enjoined or restrained hereby, a preliminary injunction issue out of this Court, directed to said defendant, Anna Katzel, her servants, agents, attorneys, and workmen, enjoining and restraining them and each of them until the further order of this Court, from using or moving in commerce between the several States or between any foreign country and any such State any face powder packages or boxes like the plaintiff's boxes or like "Exhibit H" to the Order to Show Cause herein, dated November 4, 1920, unless the packages of such face powder be the output of this plaintiff, and from in any wise selling, offering for sale or disposing of any such face powder boxes which are in defendant's possession or under her control and were acquired through recourse to interstate or foreign commerce and any such boxes having affixed thereto or used in connection

therewith any word or device in infringement of plaintiff's registered
trade mark "Java," registered by certificate No. 99,940, dated
75 September 29, 1914, and the plaintiff's trade mark registered
by certificate No. 120,330, dated February 5, 1918, and plain-
tiff's trade marks as embodied in the side labels, bottom labels and
top labels as registered by certificates No. 110,632, dated June 6,
1916, No. 111,177, dated July 4, 1916, No. 122,674, dated September
10, 1918, and No. 125,930, dated July 15, 1919, and from in any
wise infringing upon the plaintiff's said trade marks and trade mark
rights; and it is further

Ordered that the foregoing injunction may be suspended, pending
appeal, should defendant appeal from this order, provided defendant
file a bond in the sum of \$250, to be approved by this Court, that
the defendant will prosecute her appeal to effect and if she fail to
make her plea good, shall answer all damages and costs.

JULIUS M. MAYER,
U. S. District Judge.

76

Notice of Entry.

United States District Court, Southern District of New York.

Equity. 19/233.

A. BOURJOIS & Co., INC., Plaintiff,
against
ANNA KATZEL, Defendant.

SIR:

Take notice that the within is a copy of an order entered in the
office of the clerk of the United States District Court for the Southern
District of New York in the above entitled cause on January 3, 1921.

Yours, etc.,

BRIESEN & SCHRENK,
Solicitors for Plaintiff.

To John B. Doyle, Esq., Solicitor for Defendant, 34 Pine Street,
New York, N. Y.

77

Petition for Appeal.

United States District Court, Southern District of New York.

In Equity.

No. 19-233.

A. BOURJOIS & Co., INC., Plaintiff,
against
ANNA KATZEL, Defendant.

The above named defendant, feeling herself aggrieved by the order
of this Court, entered on or about the third day of January, 1921, in

the above entitled cause, wherein and whereby plaintiff's motion for a preliminary injunction was granted, does hereby appeal from the said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignments of error which are filed herewith, and the said plaintiff prays that her appeal may be allowed, and that the transcript of record, proceedings and papers upon which the said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated January 25th, 1921.

JOHN B. DOYLE,
Solicitor for Defendant.

78 Service copy petition for appeal, assignments of error, citation and bond acknowledged this 26th day of January, 1921.

BRIESEN & SCHRENK,
Solicitors for Plaintiff.

The above claim of appeal is allowed, and the prayer of the defendant herein is granted, upon the filing of a bond for \$250 with the Clerk of this Court as security for costs on appeal.

January 31, 1921.

AUGUSTUS N. HAND,
United States District Judge.

79

Assignment of Errors.

United States District Court, Southern District of New York.

In Equity.

No. 19-233.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

And now comes the defendant, Anna Katzel, by her solicitor, having prayed an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the order of the United States District Court, entered on or about the 3rd day of January, 1921, and respectfully represents, as assignments of error herein, that the said District Court erred in the following particulars, to wit:

1. In granting to the plaintiff a preliminary injunction enjoining and restraining the defendant, or her representatives, from using or moving in commerce between the several States or between any foreign country and any such State, any face powder packages or boxes like the plaintiff's boxes, unless the packages of such face powder be the output of the plaintiff.

80 2. In granting to the plaintiff a preliminary injunction enjoining and restraining the defendant, or her representatives, from selling, offering for sale, or disposing of any such face powder boxes which are in defendant's possession or under her control, and were acquired through recourse to interstate or foreign commerce, and any such boxes having affixed thereto or used in connection therewith any word or device substantially the same as, or identical with, the trade mark "Java" registered in the plaintiff's name, and the trade marks as embodied in the side labels, bottom labels and top labels as registered in the plaintiff's name.

3. In granting to the plaintiff a preliminary injunction enjoining and restraining the defendant, or her representative, from in any wise infringing upon the said trade marks and the rights claimed under said trade marks by the plaintiff.

4. In not denying the plaintiff's motion herein for the aforesaid preliminary injunction, as to each and every clause and feature thereof.

5. In finding or holding that the plaintiff is the legal owner in the United States of the sole and exclusive right to market face powder in packages bearing the registered trade marks of the plaintiff.

6. In finding or holding that the defendant's face powder packages are to all practical effect substantially the same as, or identical with, the plaintiff's packages.

81 7. In failing to find that the plaintiff's face powder packages are to all practical effect substantial copies or duplicates of the defendant's.

8. In finding or holding that the introduction of the defendant's imported merchandise to the American market is likely to interfere with the plaintiff's business and invade the plaintiff's legal rights.

9. In holding that the defendant's face powder packages constitute an infringement of the plaintiff's trade mark rights.

10. In failing to hold that the importation into and sale in the United States by the defendant of the genuine face powder manufactured and put up in boxes genuinely trade marked and labelled by A. Bourjois & Cie of France is not an infringement of the plaintiff's rights.

11. In failing to hold that the defendant's face powder packages do not reproduce, counterfeit, copy, simulate or colorably imitate the plaintiff's trade marks within the meaning of Sections 16 and 17 of the Trade Mark Law. (33 Stat. L. 728-730.)

Dated, January 25, 1921.

JOHN B. DOYLE,
Solicitor for Defendant.

Bond on Appeal.

United States District Court, Southern District of New York.

A. BOURJOIS & CO., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

New York Office,
#16 Liberty Street.

Know all men by these presents, That we, Anna Katzel, as principal and Massachusetts Bonding and Insurance Company, a corporation organized under the laws of the Commonwealth of Massachusetts, and authorized to transact business in the State of New York, and having an office and place of business at #16 Liberty Street, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto A. Bourjois & Company, Inc., in the sum of Two hundred fifty and 00/100 (\$250.) dollars, to be paid to the said A. Bourjois & Company, Inc., for the payment of which well and truly to be made, we bind ourselves, our successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 26th day of January, nineteen hundred twenty-one.

Whereas, the above named Anna Katzel has prosecuted an appeal to the United States Circuit Court of Appeals for the

Second Circuit, to reverse the order entered in the above entitled suit by a Judge of the District Court of the United States for the Southern District of New York, on the 3rd day of January, 1921.

Now, therefore, the condition of this obligation is such, That the above named Anna Katzel shall prosecute said appeal to effect and pay all costs of said appeal if Anna Katzel fails to make good her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ANNA KATZEL.

MASSACHUSETTS BONDING AND
INSURANCE COMPANY,

By HARVEY SELF,

Resident Secretary.

Attest:

EDWARD H. ROWLEY,

Attorney-in-Fact.

STATE OF NEW YORK,

County of Bronx, ss:

On this 28th day of January, 1921, before me personally came Anna Katzel, to me known and known to me to be the individual

described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.

R. L. DAVIS,
Notary Public, Westchester Co.

Certificate filed in Bronx Co.

84

Citation.

United States District Court, Southern District of New York.

In Equity.

No. 19-233.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

To A. Bourjois & Co., Inc., Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Second Circuit, at a term thereof, to be held in the City of New York, State of New York, and the Circuit above named, on the 2nd day of March, 1921, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, for the Southern District of New York, wherein you are the plaintiff and appellee and Anna Katzel is the defendant and appellant, to show cause, if any there be, why the order mentioned in said appeal should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, in the Borough of Manhattan, City and State of New York, in the Circuit above named, this 31st day of January, 1921.

AUGUSTUS N. HAND,
U. S. District Judge.

85

Stipulation as to Contents of Record.

United States District Court, Southern District of New York.

Equity. No. 19/233.

A. BOURJOIS & Co., Inc., Plaintiff,

against

ANNA KATZEL, Defendant.

It is stipulated and agreed by and between the solicitors for the respective parties that the record on appeal herein shall contain the following:

Subpœna.

Bill of Complaint.

Exhibits B to G, plaintiff's registrations.

Order to Show Cause.

Affidavits of Harry B. Grubb and John W. Kane.

Answer.

Affidavit of Anna Katzel.

Bills for purchases in France.

Affidavits of Leon J. Katzel, H. C. Stuart and William A. McDermott.

Stipulation re Exhibit 3.

Affidavit of Bernard M. Douglas.

Exhibit M, orders from customers.

86 Exhibit N, claim for broken boxes.

Exhibit O, advertisement of La-may Face Powder.

Affidavit of J. G. O'Connell.

Opinion of Judge Mayer.

Order for Injunction.

Notice of Entry.

Petition for and Order Allowing Appeal.

Assignment of Errors.

Bond.

Citation.

This stipulation.

Stipulation as to Correctness of Record.

Clerk's Certificate.

It is further agreed that all of the exhibit boxes and packages referred to in the aforementioned affidavits shall be produced for use at the argument of the appeal; that the illustrated catalogue produced by the defendant shall be treated as a physical exhibit and need not be reproduced.

Dated, New York, N. Y., March 7, 1921.

BRIESEN & SCHRENK,

Solicitors for Plaintiff.

JOHN B. DOYLE,

Solicitor for Defendant.

87

Stipulation as to Record.

United States District Court, Southern District of New York.

Equity. No. 19/233.

A. BOURJOIS & Co., INC., Plaintiff,

against

ANNA KATZEL, Defendant.

It is stipulated and agreed that the foregoing is a true transcript of the record of the District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, N. Y., March —, 1921.

BRIESEN & SCHRENK,
Solicitors for Plaintiff.
JOHN B. DOYLE,
Solicitor for Defendant.

88

Clerk's Certificate.

United States District Court, Southern District of New York.

In Equity.

No. 19-233.

A. BOURJOIS & Co., INC., Plaintiff,
against

ANNA KATZEL, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter, as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this — day of March, in the Year of Our Lord One Thousand, Nine Hundred and twenty-one, and of the Independence of the said United States the one hundred and forty-sixth.

ALEXANDER GILCHRIST, JR., *Clerk.*

89 United States Circuit Court of Appeals for the Second
Circuit, October Term, 1920.

No. 252.

Argued May 2, 1921. Decided June 8, 1921.

A. BOURJOIS & Co., INC., Plaintiff-Appellee,
v.

ANNA KATZEL, Defendant-Appellant.

Appeal from the District Court of the United States for the Southern
District of New York.

Before Ward, Hough, and Manton, Circuit Judges.

Briesen & Schrenk, for Plaintiff-Appellee.
Hans V. Briesen, of Counsel.
John B. Doyle, for Defendant-Appellant.
John R. Rafter, of Counsel.

WARD, Circuit Judge:

In July, 1913 the plaintiff, a corporation of the State of New York, bought the business and good will in the United States of

A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs,
90 French firm which had since 1879 sold in the United States a face powder manufactured by it in France described as "Java". The French firm registered in the United States Patent Office the trade mark "Java" in 1888, the trade mark "A. Bourjois & Cie." in 1908 and the word "Java" on the top and side of its boxes in 1912. The plaintiff in 1916, 1918 and 1919 registered three other trade marks used by the French firm for face powder. Under all these trade marks the plaintiff imports in bulk the face powder manufactured by the French firm and packs and sells it here in boxes.

The defendant conducts a retail pharmacy in New York City and sells in New York, New Jersey and other states the same genuine face powder manufactured by the French firm imported by her in its original boxes on which are printed its trade marks and labels. The only difference between the trade mark and labels of A. Bourjois & Company, Inc., and A. Bourjois & Cie., E. Wertheimer & Cie. Successeurs, is that the powder sold by the defendant is called Poudre de Riz de Java, as the plaintiff called it until 1916, when it altered the name to Poudre Java, and that on the bottom of the plaintiff's boxes is printed "Trade Mark Reg. U. S. Pat. Off. Made in France—Packed in the U. S. A. by A. Bourjois & Co., Inc., of N. Y., Succesors in the U. S. to A. Bourjois & Cie. and E. Wertheimer & Cie".

The plaintiff filed this bill on the ground of infringement of its registered trade marks, praying that the defendant be enjoined both provisionally and finally from selling the French firm's face powder under the trade mark "Java" or the trade mark "Bourjois" or under any of the plaintiff's registered trade marks and for an accounting.

The District Judge granted the motion for a preliminary injunction and the defendant appeals from that order.

It is to be noticed in the first place that the residence and citizenship of both parties being in the State of New York
91 question of unfair competition is involved and indeed there is no evidence of any such competition.

The assignment from A. Bourjois & Cie., E. Wertheimer & Cie. Successeurs, to A. Bourjois & Company, Inc. is not produced but we assume for the purposes of this case that the plaintiff is entitled to the French firm's trade marks under *Menendez v. Holt*, 129 U. S., 514 and *Wertheimer v. Batcheller*, 185 F. R., 850, and that it would be a breach of the French firm's obligations to sell its face powder in this country, *Le Page v. Russian Cement Co.*, 51 F. R., 941.

We set on one side all authorities cited by the plaintiff arising out of sales under the same trade marks of two different competitive articles manufactured by different persons, such as *Hanover Milling Co. v. Metcalf*, 240 U. S., 403; *Scandinavia Co. v. Asbestos Co.*, 25 F. R., 934, because it is quite clear that the defendant could not sell

face powder manufactured by her or by any other person than A. Bourjois & Cie. under these trade marks. But the article sold by the plaintiff and covered by its registered trade marks is the face powder actually manufactured by the French firm, imported in bulk and packed here by the plaintiff, which is the precise article imported by the defendant in the French firm's original boxes and sold here. The question is whether the defendant has not the right to sell this article under the trade marks which truly indicate its origin. We think she has. The question has been so decided in three cases in this circuit, Apollinaris Co. v. Scherer, 27 F. R., 18; Russian Cement Co. v. Frauenhar, 133 F. R., 518 and Cretsch v. Schoening, 238 F. R., 780.

In the Apollinaris case Saxlehner, owner of the Hunyadi Janos spring in Hungary, gave to the Apollinaris Company the exclusive right to sell the water under the trade mark "Hunyadi Janos" in Great Britain and the United States. The Apollinaris Company registered the name and the label as trade marks in the United States Patent Office. Scherer applied to Saxlehner to sell him the water for importation into the United States, which Saxlehner refused to do, telling him of the Apollinaris Company's exclusive rights. Thereafter Scherer purchased the water from other parties in Germany, imported it into the United States and sold it under the name Hunyadi Janos and with the same label as the Apollinaris Company's with one immaterial variation. Judge Wallace said:

"The complainant established an agency for the sale of the water in this country, but, as it now asserts, is unable to maintain its own prices for the article because the defendant purchases the water in Germany from persons to whom it has been sold by Saxlehner, imports it, and sells it here at lower prices. It is shown that the defendant purchases the water in bottles under the label adopted by Saxlehner containing the cautionary notice, and that he does this after having applied to Saxlehner to sell him the water and been refused and informed by Saxlehner of the complainant's rights.

The bill of complaint proceeds in part upon the theory that the defendant is infringing the complainant's trade-mark in the name and label applied to the water, but all the averments in this behalf may be disregarded as irrelevant to the real question in the case. No doubt is entertained that the name when applied to the water is a valid trade-mark, and that the complainant should be protected against the unauthorized use of the trade-mark by another. The complainant would be entitled to this protection entirely irrespective of the registration of its trade-mark in the patent office. The same observations apply to the use of the label. The complainant has a common-law right to the name and the label as a trade-mark by which its mineral waters are identified; and as the necessary diversity of citizenship exists between the parties to confer jurisdiction upon this court, the only effect of registration is to afford and perpetuate the evidence of the complainant's title. But the defendant is selling the genuine water and therefore the trade-mark is not infringed. There is no exclusive right to the use

of a name or symbol or emblematic device except to denote authenticity of the article with which it has become identified association. The name has no office except to vouch for the genuineness of the thing which it distinguishes from all counterfeits; and until it is sought to be used as a false token to denote the product or commodity to which it is applied is the product or commodity which it properly authenticates, the law of trade-marks cannot be invoked.

The real question in the case is whether the defendant is unlawfully interfering with any exclusive right of the complainant to control the sale of the water in the territory ceded to the complainant for that purpose by Saxlehner. It is manifest that the acts of the defendant tend to deprive the complainant of the substantial advantages which it expected to obtain from the privilege transferred to it by Saxlehner. It can no longer maintain its own prices for mineral water, or hold out the inducements it formerly could to agents it has selected to introduce the article to the patronage of the public, and build up a trade. It can no longer protect itself efficiently against the chances of a spurious article being palmed upon the public as its own. It is therefore measurably deprived of the acts of the defendant of the profits and benefits which it contemplated when it purchased from Saxlehner the exclusive right of importing the water into this country and selling it here. If the complainant could acquire an exclusive right to sell the water here the case would be plain. If it could not, it still remains to consider whether the defendant has violated any duty which the law recognizes in his relations to the transactions. There would seem

to be no doubt that the agreement between Saxlehner and the complainant was a valid one. He had the right to dispose of his property in the product of his spring as he saw fit, and it is not apparent how the transfer of a part of his exclusive right to vend the water, by which a territorial division in its enjoyment was created, can be deemed obnoxious to any principle of public policy as tending to create a monopoly or an unlawful restraint of trade. If Saxlehner were now endeavoring to compete with the complainant in the sale of the water in the ceded territory, his conduct would furnish a ground for equitable jurisdiction and the remedy of injunction because of the inadequacy of a remedy at law, Bisp. v. Saxlehner, 463. It is equally clear that if the defendant were co-operating with Saxlehner collusively to violate the complainant's right to the exclusive sale of the water he also would be restrained. In such a case the foundation of equitable redress would be the breach of covenant on the part of Saxlehner, and the defendant when acting in aid would be identified with Saxlehner and amenable to the remedy as though he were Saxlehner himself. But it is important to bear in mind that the case would be one for equitable cognisance, and the remedy of an injunction merely upon the ground that the complainant's damages arising from the breach of covenant could not be reparably redressed at law."

In the Le Page case the defendant bought in bulk of third parties

glue made and sold by the plaintiff under the trade name of Le Page's Glue and bottled and sold it under that name. We said:

"Counsel for complainant argues that defendants should be enjoined from applying the name 'Le Page' to a glue made by complainant, which is inferior to the most expensive brands sold by complainant under that name, on the ground that this is a gross fraud and an imposition upon the public. How such conduct constitutes a fraud upon the public does not appear from the evidence. The labels on defendant's bottles contain no statement as to whether the glue put up by it is either of a superior or inferior quality, but merely that this glue is manufactured by complainant and is bottled by defendants, and that 'this glue is known all over the world as the best for cementing wood, leather, glass,' etc. If the public gets an inferior quality of glue when it purchases that bottled by defendants, it is because the complainant has seen fit to sell such glue under the same trade-name as it had applied to a superior article, and has chosen thus to reap the profit from the sale to the public of two qualities or grades of the same article under the same trade-name. A court of equity will not enjoin a person from affixing to goods sold by him their true name and description, in the absence of any evidence of an attempted fraud, such as by representing his goods as of a different origin or quality or manufacture from what they actually are. The case of *Gillott v. Kettle*, 3 Duer, 624, cited by complainant as 'very close in point,' illustrates the rule and its application. There the defendant removed the labels from an inferior quality of pens manufactured by complainant, and affixed other labels which imitated the labels on a superior quality of pens made by complainant. The court held that 'by such a practice the defendant endeavors by a false representation to effect a dishonest purpose; he commits a fraud upon the public and upon the manufacturer.' But here there is no false representation by spurious label or false statement. The label tells the truth, and nothing but the truth. There is no fraud upon the public, for it gets the genuine, identical thing described by the label (*Apollinaris Co. v. Scherer*, (C. C.) 27 Fed., 18); there is no fraud upon the manufacturer, for its vendees resell its manufacture, to which it has applied its name (*Vitascope Co. v. United States Phonograph Co.* (C. C.) 83 Fed., 30), coupled with the statement that it (the vendee) is responsible for the bottling of the manufacture."

In the *Gretsch* case the *Gretsch* Company had the exclusive agency for the United States of the sale of violin strings made in Germany by Mueller under the name "Eternelle" and with Mueller's approval registered the name as the trade mark in the United States Patent Office. Schoening purchased such strings in Germany and imported them into the United States. The case arose under Sec. 17 of the Trade Mark Act as to the importation of merchandise copying or simulating a trade mark registered in the United States Patent Office. After referring to the two foregoing cases we said:

"The rationale of both decisions is that the defendant in each case was selling the genuine article identified by the trade-mark and the public was not misled, but was getting exactly what it paid for. These decisions, however, were made before the act in question was passed. Assuming that Congress could protect the owner of a registered trade-mark against the importation by third parties of the genuine article under that trade-mark, has it done so? We think not. The Act prohibits the entry of imported merchandise which shall 'copy or simulate' a trade-mark registered under it. The obvious purpose is to protect the public and to prevent anyone from importing goods identified by their registered trade-mark which are not genuine. In this case, however, the imported goods were the genuine articles identified by the trade-mark. We assume that Schoening has a valid trade-mark, even if he does not manufacture the strings (*Menendez v. Holt*, 128 U. S., 514), applying to the whole of the United States and still are of opinion that it is not infringed by one who buys in Germany the genuine article identified by the trade-mark, imports it into the United States and sells it so marked here."

The analogy between patents and trade marks is not complete. A patent gives the patentee a monopoly to make, sell and use and grant to others the right to make, sell and use the subject patented in the United States for the term of the patent. Hence articles lawfully made, used and sold in foreign countries cannot be sold in this country if they infringe the patent. Trade marks, on the other hand, are intended to show without any time limit the origin of the goods they mark so that the owner and the public may be protected against the sale of one man's goods as the goods of another man. If the goods sold are the genuine goods covered by the trade-mark the rights of the owner of the trade mark are not infringed.

The order is reversed.

98 United States Circuit Court of Appeals for the Second Circuit, October Term, 1920.

No. 252.

A. BOURJOIS & Co., INC., Plaintiff-Appellee,

v.

ANNA KATZEL, Defendant-Appellant.

Argued May 2, 1921. Decided June 8, 1921.

Appeal from the District Court of the United States for the Southern District of New York.

Before Ward, Hough, and Manton, Circuit Judges.

HOUGH, C. J., dissenting:

The majority opinion states as the question in this case whether defendant "has not the right to sell this article under the trade-

marks which truly indicate its origin." With this statement I agree, but disagree with the meaning given by the decision to the word "origin."

It is not yet settled whether a trademark is to be primarily regarded as protecting the trademark owner's business from a species of unfair competition, or protecting the public from imitations.

99 The decision in this case seems to me to lean the wrong way, because in my opinion a trade mark is primarily a protection to the owner's business. It is attached to the business, is a part of it, and cannot be detached therefrom; there being no such thing as the transfer of a trademark in gross. If this be true it makes no difference whether the plaintiff's business grew out of an agency for another, provided only that it be shown that it is an honest business and belongs to the person who attached, and (perhaps) duly registered the trademark, which describes the product of that business.

This plaintiff made a business in Java powder. It is an honest business, and whatever rights the French Manufacturer had in the United States became the rights of the plaintiff. If, therefore, the primary function of the trademark is to protect this plaintiff's business in his own country, it makes no difference at all that the genuine French article is the thing offered by defendant. That genuine article has become an infringement because the business of dealing in that article within the United States is the plaintiff's business.

100 United States Circuit Court of Appeals for the Second Circuit.

A. BOURJOIS & Co., Inc., Plaintiff-Appellee,

against

ANNA KATZEL, Defendant-Appellant.

Petition for Rehearing.

Your petitioner, A. Bourjois & Co., Inc., being aggrieved by the decision filed in this cause on the 8th day of June, 1921, respectfully prays for a rehearing.

The decision holds in effect that American investors, who years ago made an outright and complete purchase from prior European owners, of an American trade-mark and of the good will of the business pertinent thereto, and have registered said trade-mark in their own name, are without right of redress against the distribution in America of products marketed under practically identical labels, recently purchased abroad from recent customers of the concern that years ago completely sold out to said American investors the complete trade-mark rights and good will in the premises for the whole of the United States.

101 In support of this petition the petitioner represents:

(1) The question involved is of the gravest importance, and a denial of the rights claimed by the petitioner will throw into inter-

minable confusion investments reaching into many millions of dollars entered into in good faith by many citizens of this country.

(2) Should there be the slightest doubt as to the correctness of a decision adverse to the plaintiff on a question of this magnitude and importance, nationally as well as internationally, it would seem advisable to dispose of the cause not by resolving the doubt against the plaintiff, but rather by submitting the doubtful point to the judgment of the Supreme Court of the United States.

(3) The question of law which involves the rights of an owner of a registered American trade mark, acquired by purchase under authority of the Trade Mark Statute, as against imported merchandise bearing the same trade mark bought upon a foreign market by the assignor subsequent to the date of the sale of the American trade mark, has not heretofore been dealt with in any known authority and certainly not in any one of the three decisions upon which the majority opinion of the Court of Appeals is based.

An assignee of a trade mark by purchase must necessarily be. trade marks can be assigned at all, invested, upon consummation of said purchase, with every right of the assignor. The new owner can have the goods manufactured wherever he pleases, can make them himself, can add new lines of merchandise marked under the same trade mark and can generally deal with respect to goods sold under said trade mark as complete master of the situation without any limitation, duty or obligation other than that in offering his wares to the public his representations must be truthful. This is fundamental.

A mere agent, on the contrary (like the Apollinaris Company with respect to "Hunyadi" water or the Gretsch Company with respect to Mueller's "Eternelle" strings), possesses no proprietary rights in the trade mark itself or in its good-will, and cannot dictate with respect to the nature of the product to which the trade mark is to be applied, cannot appropriate the trade mark to new lines of development, cannot determine the nature of the labels or where and how they shall be affixed and in general, having no proprietary right in the trade mark, has only an interest in protecting a commercial position flowing out of an agency. All that has been thus far decided in the cases cited by this Court is that such an agent, not being a trade mark proprietor by purchase, cannot under the Trade Mark Law control the channels through which merchandise emanating from the true owner of the trade mark is distributed in the United States. No case has ever held that the legal owner of a registered trade mark in the United States must endure the presence here, in a market in which he, as trade mark owner, has absolute and complete dominion, the rivalry of a competitive article hostilely marketed by a business adversary, no matter how or where these competitive goods were acquired. Rehearing is therefore requested on the point that it would be error, on the part of this Court, to apply, as the supposed law of the case, authorities which are not in point.

(4) The Court in its opinion failed to give consideration to the fact that the Trade Mark Statute, which alone governs this case, was enacted subsequent to the decisions in the Apollinaris case and the Le Page case, and that said Trade Mark Statute provided in so many words that every registered trade mark was assignable. The trade mark before this Court was so assigned under said Statute and said Statute could not have provided for a transfer of an American trade mark by assignment if Congress had intended to except from such transferability, as a complete right invested with all privileges pertinent to an originator of a trade mark, American trade marks acquired by purchase from foreigners.

(5) It is believed that what is deemed to be the erroneous conclusion of this Court was arrived at by reason of an inadvertent misconception of the Court regarding the facts of the present case. This is indicated by the statement in the opinion that

"We assume for the purposes of this case that the plaintiff is entitled to the French firm's trade marks under *Menendez v. Holt*, 128 U. S. 514, etc."

This sentence seems to assume that the French firm was still the owner of the trade marks and that the petitioner was merely the exclusive distributor in the United States of the French firm's product. This is a mistaken thought. The facts of the present case are.

"That on or about said July 5, 1913, the said firm of A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs, did grant, sell and convey to the plaintiff, A. Bourjois & Co. Inc. and said plaintiff did purchase from said A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs, for and in consideration on the part of the plaintiff of an obligation to pay, among other things, Four hundred thousand dollars (\$400,000.00) in money, the entire business heretofore and then being carried on by said A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs, in the United States, to wit, the sale of the various toilet preparations manufactured and sold by said A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs, in the United States of America, together with the good will of said business in the United States, and also any and all trade marks, trade names and trade mark rights relating thereto in the United States and also the sole and exclusive right to manufacture and sell in the United States any and all toilet preparations then made by the said A. Bourjois & Cie., E. Wertheimer & Cie., Successeurs."

The foregoing quotation is from the verified bill (Record, p. 3) and the facts are not denied.

The rights thus acquired for more than Four hundred thousand dollars in money included the trade marks, the good will and the sole and exclusive right to manufacture. Under this purchase your petitioner could manufacture any goods it pleased and market them

in the United States under the purchased trade mark. It could have the goods manufactured for itself by others in this or any foreign country. It could apply its "Java" trade mark to any goods which petitioner saw fit. Petitioner was the sole and exclusive master and determining factor of the entire situation, and not until petitioner affixed its "Java" trade mark to articles of commerce did those articles become "Java" products so far as the United States was concerned.

Once the Court grasps the fact that the purchase by the American Company from the French Company was a complete and outright purchase of the trade mark and good will, we believe that the Court cannot fail to see that in this country nothing that did not have the petitioner's sanction could legitimately be brought upon the market under petitioner's trade mark "Java". So long as trade marks

105 are made the subject of purchase and sale—and the Statute leaves no doubt on that subject—the purchaser must necessarily have the complete right to exclude from the United States markets goods which do not emanate from the trade mark proprietor. If American trade marks owned by Europeans can be bought by Americans, Americans can afford to pour fortunes into advertising and into the building up of a market only so long as they are invested with the right to exclude from the American markets all goods bearing similar trade marks but emanating from any other source whatsoever. If that is not the law then the Trade Mark Statute has been widely misunderstood, and if the Trade Mark Statute does not mean what it apparently says in plain language, the new construction of that law, which seriously affects a vast amount of invested capital, presents a question which is undoubtedly worthy of submission to the United States Supreme Court.

(6) It is believed that through a mistaken conception regarding the facts, the Court was led astray in dealing with the subject of origin. The Court recognizes in its opinion the authority of *Menendez v. Holt*, 128 U. S. 514, in which Holt's trade mark "Favorita" was sustained as Holt's exclusive property when applied to flour not of Holt's manufacture but bought by Holt from a miller. The miller sold to many other customers, but surely none of these other customers could have acquired the right to market flour as "Favorita" merely because the manufacturing origin of the flour which Holt marketed as "Favorita" was the same. The question of origin when dealt with in trade mark cases means that origin which the inhabitants of the United States recognize as the immediate source of the merchandise which they consume; not

106 necessarily the manufacturer but very frequently merely the person with whom they are accustomed to do business. In the United States the trade mark "Java" is registered in the name of the petitioner and all people thus have notice that the petitioner is the sole owner of said trade mark and the sole person who has authority to determine what goods shall or shall not be marketed under the name "Java", where they shall be made, what ingredients they shall contain, what texture they shall have, what color they

shall possess and what labels shall be used to give them currency. The "Java" business in the United States is undoubtedly, upon the present Record, the business of your petitioner and not the business of any other person. "Java" in the United States means the output of the petitioner. The petitioner is the sole and only publicly recognized source and origin of "Java" powder. It is to the petitioner and to no one else that the public in the United States look and who enjoys the public confidence that the "Java" powders to be purchased shall be of equal quality as the "Java" powders heretofore purchased. To the public here it is immaterial in what factory the powder is ground or in what establishment the perfume is incorporated or through what agency the color is governed. With respect to all of these matters the public here look to the petitioner and to the petitioner alone (Record, p. 62). Under such circumstances, the source or origin of the goods with which we are concerned in considering trade mark questions is solely and only the petitioner, and the French firm is nothing more than a convenient miller from whom, as in *Menendez v. Holt*, the petitioner purchases those powders which the petitioner uses to satisfy the petitioner's market for products under a trade mark which is universally recognized here as the petitioner's alone.

107 (7) It is respectfully suggested that a reconsideration on the foregoing lines will lead this Court at least to question its decision as thus far arrived at, and, should the Court go no farther than entertain a doubt on the subject matter, cause it to certify the question at issue to the United States Supreme Court.

Respectfully submitted,

HANS v. BRIESEN,
Solicitor for Petitioner.

WILLIAM A. REDDING,
Of Counsel.

108 United States Circuit Court of Appeals for the Second Circuit
October Term, 1920.

No. 252.

A. BOURJOIS & COMPANY, INC., Plaintiff-Appellee,
against

ANNA KATZEL, Defendant-Appellant.

Petition Filed June 18, 1921. Decided June 30, 1921.

Appeal from the District Court of the United States for the Southern
District of New York.

Before Ward, Hough, and Manton, Circuit Judges.

Petition for Rehearing.

Hans v. Briesen, Esq., and William A. Redding, Esq., of counsel
for petitioner;

L. E. Varney, Esq., as amicus curiæ.

Per Curiam:

We are asked to certify the question involved in this case to the
Supreme Court on the ground of its supreme importance in
109 view of the many businesses with their accompanying trade
marks of German citizens, bought during the European War
by citizens of this country from the Custodian of Alien Property.

It is not doubted that an American citizen may buy the business
of a foreigner in the United States, with its accompanying trade
marks, and having done so may subsequently change the character
and quality of the goods at pleasure. But that is not this case. The
owner of the trademark cannot change them and still assert that they
are the actual goods manufactured by the foreigner and imported
by him. Such a misrepresentation would deprive him of the pro-
tection of the law.

The precise question decided by us has been misapprehended.
The trademarks and labels complained of are those of the French
house, and the plaintiff asserts that it is selling under them face powder
manufactured by the French house in France and imported by
it in bulk and repacked here. It treats this re-packing as a very
material consideration.

The defendant says that this is precisely the product made by the
French house in France and imported by her in the boxes of the
French house with the same trademarks and labels, which she is
selling here.

If in the case of *Menendez vs. Holt*, Holt had asserted that he was
selling the flour under the trademark *Favorita* which had been made

by a miller under that trademark, the case would be more like the one under consideration.

It is sought to distinguish the three cases decided in this circuit which we have followed upon what we think a misapprehension of their facts.

It is said that in the Apollinaris case that Company was the mere agent of Saxlehner; this is not so. The Company bought the genuine spring water from Saxlehner, imported it into the United States and sold it here as the water of that spring. All that it owed

110 Saxlehner was the price it agreed to pay; there was no relation whatever of agency. Judge Lacombe, in 91 Fed. Rep., 538, and Mr. Justice Brown in 179 U. S., 19, both said that the Company was not Saxlehner's agent.

In the Le Page case it is said that the plaintiff owner of the trademark sold the Le Page glue to the defendant; this is not so. The plaintiff refused to sell to the defendant, who thereupon bought the glue from third parties in bulk and re-bottled it.

So in the Gretsch case it is said that Schoening was merely the exclusive agent of Mueller for the sale of his violin strings called "Eternelle," in the United States. The District Judge found that there was an exclusive agency, though the evidence on the subject was very meagre, and we assuming that to be true and also that Schoening had a valid trademark held nevertheless that Gretsch could lawfully import Mueller strings from Germany and sell them here.

The petition is denied.

111 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit Held at the Court Rooms, in the Post Office Building, in the City of New York, on the 18th Day of June, One Thousand Nine Hundred and Twenty-one.

Present:

Hon. Henry G. Ward,
Hon. Charles M. Hough,
Hon. Martin T. Manton,
Circuit Judges.

A. BOURJOIS & Co., INC., Plaintiff-Appellee,

v.

ANNA KATZEL, Defendant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is reversed with costs. Further ordered that execution be issued for the collection of said costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

M. T. M.

112 Endorsed: United States Circuit Court of Appeals, Second Circuit. Bourjois & Co. v. A. Katzel. Order for Mandate. United States Circuit Court of Appeals for the Second Circuit. Filed Jul- 8, 1921. William Parkin, Clerk.

113 At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit *Filed* in the Court Rooms Thereof, in the Post Office Building, City of New York, on the 11th Day of July, 1921.

Present:

Hon. Henry G. Ward,

Hon. Charles M. Hough,

Hon. Martin T. Manton,

Circuit Judges.

A. BOURJOIS & Co., INC., Plaintiff-Appellee,

v.

ANNA KATZEL, Defendant-Appellant.

A petition for a rehearing having been filed herein by counsel for the appellee;

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

H. G. W.

M. T. M.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Filed Jul- 22, 1921. William Parkin, Clerk.

114 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 113, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of A. Bourjois & Co., Inc., against Anna Katzel as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern

District of New York, in the Second Circuit, this 30th day of September in the year of our Lord One Thousand Nine Hundred and twenty-one and of the Independence of the said United States the One Hundred and forty-sixth.

[Seal of United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

115 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Anna Katzel is appellant, and A. Bourjois & Company is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,
116 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,530. Supreme Court of the United States. No. 575, October Term, 1921. A. Bourjois & Company, Inc., vs. Anna Katzel. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 23, 1921. William Parkin, Clerk.

117 Supreme Court of the United States, October Term, 1921.

No. 575.

A. BOURJOIS & Co., Petitioner,
against

ANNA KATZEL, Respondent.

It is stipulated and agreed by and between counsel for the respective parties hereto that the record and proceedings as certified

by the clerk of the United States Circuit Court of Appeals for the Second Circuit on the Petition for Writ of Certiorari herein and now on file in the office of the clerk of the Supreme Court of the United States be taken and stand as the record and proceedings which the United States Circuit Court of Appeals for the Second Circuit is directed to certify to the Supreme Court of the United States according to a Writ of Certiorari issued in this case out of the Supreme Court and dated November 19, 1921.

HANS v. BRIESEN,
Of Counsel for Petitioner.
 MANTON M. TOYRELL,
Of Counsel for Respondent.

November 23, 1921.

118 To the Honorable the Supreme Court of the United States
 Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, November 25th, 1921.

[Seal of United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court of
 Appeals for the Second Circuit.*

119 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Anna Katzel v. Bourjois & Co. Return on Certiorari. 1.70.

120 [Endorsed:] File No. 28,530. Supreme Court U. S., October Term, 1921. Term No. 575. A. Bourjois & Co., Inc. Petitioner, vs. Anna Katzel. Writ of certiorari and return. Filed Nov. 29, 1921.